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NOMINATION OF FRANCIS A. KEATING

ORIGINAL

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HEARINGS

BEFORE THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

NOMINATION OF

FRANCIS A. KEATING TO BE ASSISTANT SECRETARY OF THE TREASURY FOR ENFORCEMENT AND OPERATIONS

FRIDAY, NOVEMBER 22 AND DECEMBER 4, 1985

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NOMINATION OF FRANCIS A. KEATING TO BE ASSISTANT SECRETARY OF THE TREASURY FOR ENFORCEMENT AND OPERATIONS

FRIDAY, NOVEMBER 22, 1985

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC.

The committee met, pursuant to notice, at 9:21 a.m. in room SD-215, Dirksen Senate Office Building, Hon. John Heinz presiding.

Present: Senators Heinz, Armstrong, and Boren.

Also present: Senator Nickles.

Senator HEINZ. The committee will come to order.

Ladies and gentlemen, the purpose of this hearing is to review the qualifications of Mr. Francis A. Keating to be Assistant Secretary of the Treasury for Enforcement and Operations. Mr. Keating comes to us highly recommended.

He is an attorney in Tulsa, Oklahoma. He was a U.S. attorney between 1981 and 1984, a special agent for the Federal Bureau of Investigation between 1969 and 1971; and between 1972 and 1981, he served in the Oklahoma State House of Representatives.

I have had the opportunity to review Mr. Keating's file. However, before we proceed any further, I would note the presence of Senator Don Nickles, who I understand would like to introduce Mr. Keating.

Senator Nickles.

STATEMENT OF HON. DON NICKLES, U.S. SENATOR FROM THE STATE OF OKLAHOMA

Senator NICKLES. Thank you, Mr. Chairman. It is a pleasure for me, and Senator Boren as well—and I am speaking for both of us—to introduce to this committee my good friend, Frank Keating, who is President Reagan's nominee to be the next Assistant Secretary of the Treasury for Enforcement and Operations. I think Frank Keating will do an outstanding job.

Mr. Chairman, I will have a statement, which I would appreciate having included in the record, but I would like to make some personal comments. I have had the pleasure of knowing Frank Keating for some time. He and his wife, Cathy, are very good friends of mine. They have done an outstanding job in the State of Oklahoma.

I got to know Frank Keating when we served a couple of years together in the State senate, where he was minority leader in the State senate and did an outstanding job. Prior to that, he was also a Tulsa County prosecutor. He also served as State representative.

I think he has demonstrated his leadership abilities, and I had the high honor of recommending Frank Keating to the President to be the U.S. Attorney for the Northern District of Oklahoma. He was quickly confirmed; he did an outstanding job and was recognized throughout the country for his leadership as U.S. attorney. He organized the Nation's first narcotics task force that put large-scale traffickers out of business and in prison. He was commended by the then Attorney General William French Smith for efficiency in his office and was appointed by the Attorney General as National Chairman of the Attorney General's Advisory Committee for U.S. attorneys.

He did an outstanding job as a U.S. attorney, State senator, State representative, and County prosecutor. He has also served and worked for the FBI. I think President Reagan and Secretary Baker have made an outstanding selection in Frank Keating. I think he will serve this country quite well.

I thank the Chairman and Senator Armstrong for your interest and also for your attendance this early in the morning. That is very commendable of you.

Senator HEINZ. Senator Nickles, thank you very much.

In a minute, I will be pleased to recognize Mr. Keating for any remarks he cares to make; but I would like to indicate to the members of the committee that the Director of the Office of Government Ethics has forwarded a letter to the committee approving the nominee's compliance with the Ethics in Government Act; and that letter will be made a part of today's hearing record.

[The letter from the Office of Government Ethics follows:]

United States of America
Office of Government Ethics

Office of Personnel Management
P O Box 14108
Washington, D C 20044

OCT 31 1985

Honorable Robert Packwood
Chairman, Committee on Finance
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Francis A. Keating II, who has been nominated by President Reagan for the position of Assistant Secretary for Enforcement and Operations, Department of the Treasury.

We have reviewed the report and have also obtained advice from the Department of the Treasury concerning any possible conflict in light of the Department's functions and the nominee's proposed duties. Based thereon, we believe that Mr. Keating is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

David H. Martin
Director

Enclosure

CON 132-64-0
March 1985

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Senator HEINZ. Mr. Keating, do you have any remarks that you would like to make? I know that Senator Armstrong has a number of questions for you; but if you have any comments you would care to make at this time, we would be pleased to hear from you.

STATEMENT OF FRANCIS A. KEATING

Mr. KEATING. Mr. Chairman and Senator Armstrong, no, I do not have a formal statement to make. I wish, of course, to thank Senator Nickles for his gracious introduction. If the committee should see fit to recommend my confirmation, I intend to serve capably; and I appreciate your faith in me.

And I would hope to do an outstanding job for the Department and for the people.

Senator HEINZ. The chair would ask unanimous consent that the remarks of Congressman Frank Wolf appear at the appropriate point in the record; and without objection, that is so ordered.

[The prepared written statement of Congressman Wolf and an article from the Congressional Record, Nov. 7, 1985, follow:]

STATEMENT OF REPRESENTATIVE FRANK R. WOLF

BEFORE

SENATE FINANCE COMMITTEE

CONFIRMATION HEARINGS OF

FRANK KEATING

NOVEMBER 22, 1985

Mr. Chairman, I appreciate this opportunity to express my views and concerns about the nomination of Mr. Keating to fill the post of Assistant Secretary of Treasury for Enforcement and Operations. I have met Mr. Keating and believe he is well qualified for this position.

I am conveying my thoughts to the committee today, though, because of concerns about the position being filled and not because of concerns about the individual filling the position. The Assistant Secretary of Treasury for Enforcement and Operations has the responsibility of enforcing a wide range of laws from drug enforcement, and border control to inspection and also seizure of unlawful goods entering the the U.S. That is where my concerns are centered.

Earlier this year, I testified before a subcommittee of this panel on my concerns about the United States' involvement in importing goods made by slave labor in Soviet Union prisons. In all candor, I believe enforcement of Section 307 of the 1930 Tariff Act prohibiting the importation of such goods has been lax during recent years. In the past two years, a great deal of interest has been focused on enforcement efforts against slave labor-made products. Unfortunately, in my opinion the attention has not resulted in a satisfactory response from tne Department of Treasury in actually addressing this issue.

Goods continue to be allowed into our country, emigrants from Soviet prisons continue to recant their experiences in slave labor camps and yet no enforcement of the ban results. I am including with my statement a copy of my remarks in the House during recent floor debate on an amendment I offered to the FY'86 Treasury/Postal Service Appropriations bill. Although my amendment did not survive floor action, the intent was to cut off funding for the Assistant Secretary's office for which Mr. Keating is being nominated if action is not taken specific to the slave labor question.

It is my hope that Mr. Keating will make a good faith effort to seriously address the problem created by slave labor imports. I believe, he should also be aware, as should the Department of Treasury and this Administration, that Congress has repeatedly demonstrated its support for enforcing this law and further noncompliance with congressional intent in this regard can only result in a cutoff of funding for this office or additional action to make certain that the enforcement we expect of this agency on laws of such longstanding is forthcoming.

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 99th CONGRESS, FIRST SESSION

Vol. 131 WASHINGTON, THURSDAY, NOVEMBER 7, 1985 No. 153

House of Representatives

Mr. WOLF. Mr. Speaker, I want to begin by thanking the chairman, Mr. ROYBAL, and the ranking minority member, Mr. "JOE" SKEEN, for their cooperation and help and also Mr. CONTE who is no longer in the Chamber.

I also want to acknowledge the staff. Having been a staff person up here on Capitol Hill for a long time, myself, I think the help that I have gotten from the staff has been super.

I want to publicly thank them. I also want to recognize Congressman HOYER for his work on these OPM rates. Without his help, there is no way we could have made these changes.

Mr. Speaker, I rise in support of this conference report. I want to talk about one provision in the conference report.

Mr. Speaker, what I have in my hand is a babushka doll which says on the bottom, "Made in the U.S.S.R."

Mr. Speaker, this doll was made by slave labor in the Soviet Union. We have language in this report which requires the Secretary of the Treasury and Customs to bring a case to prohibit the importation of these wood products which are clearly made by slave labor in the Soviet Union. We have several indications that this is the fact.

There was an article in Reader's Digest which said:

In February of this year the United States State Department exposed Russian labor camps in a detailed study concluding that: Soviet authorities still exploit forced labor on a large scale for both domestic and Western export markets." There can be little doubt now that much of today's Soviet economy is built on the backs of the wretched men, women and children who toil in nearly 2000 Russian prisons and forced labor camps.

And I stress, and I have proof, that there are children in these camps.

Thousands more forced laborers died in the Kolyma goldfields of Siberia in the 1930's. Nobel Prize-winning Russian author Aleksandr Solzhenitsyn documented this nearly a decade ago in his monumental work "The Gulag Archipelago."

Mr. Speaker, I submit this article for the RECORD.

"MADE IN U.S.S.R."—BY FORCED LABOR

(By Joseph A. Harriss)

Western nations need to take a closer look at their Soviet imports. Many were manufactured at a terrible price in human suffering.

In Frankfurt West Germany, I was interviewing some recent inmates of Soviet forced labor camps. One woman pointed at the wooden folding chair that I was sitting on. "That is a souvenir from the Gulag," she said, indicating the camp where it was produced. The United States last year imported hundreds of such chairs, part of our multimillion dollar trade in which we buy the products of Soviet convict labor, in contravention of U.S. law.

In February of this year, the U.S. State Department exposed Russian labor camps in a detailed study concluding that "Soviet authorities still exploit forced labor on a large scale . . . for both domestic and Western export markets."

There can be little doubt now that much of today's Soviet economy is built on the backs of wretched men, women and children who toil in nearly 2000 Russian prisons and forced-labor camps. What is less well known is that importing the products of forced labor violates an explicit American law, the Smoot-Hawley Tariff Act of 1930. Section 307 states: "All goods, wares, articles and merchandise mined, produced or manufactured wholly or in part in any foreign country by convict labor or forced labor . . . shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited."

Until recently, few realized the extent to which the Soviet Union still depends on convict labor—the only major industrialized nation that makes it a mainstay of its economy. To be sure, many Americans remember that Stalin built spectacular projects like the Volga-Don canal, the second Trans-Siberian railway and entire new towns at the cost of hundreds of thousands of lives. Thousands more forced laborers died in the Kolyma gold fields of Siberia in 1930s. Nobel Prize-winning Russian author Aleksandr Solzhenitsyn documented this nearly a decade ago in his monumental work *The Gulag Archipelago*.

But it took the controversy between the United States and its NATO allies over the Siberian gas pipeline to Europe to focus attention on continued Soviet dependence on this practice. The State Department report drew on CIA intelligence, including satellite photos, and suggested that the Soviets had indeed used forced labor on the pipeline, especially for clearing forests and building roads. Commented Sen. William L. Armstrong (R-Colo.), who originally requested the study: "This is a shameful situation beyond the comprehension of most Americans."

The number of convict laborers in the U.S.S.R. is down from its peak of 15 million under Stalin, but they still number an estimated four million, and the conditions under which they work are hardly less nightmarish. Far from fulfilling Marx's promise to free workers from their chains, the Soviet system has systematically enslaved them.

Graveyard Soup. Goading the West's conscience on the forced-labor issue are the International Society for Human Rights,

based in Frankfurt and the International Scientific Commission in Copenhagen. Last fall in Bonn the two groups sponsored an international hearing of prisoners, relatives, leaders and academics that heard former prisoners graphically portray brutal working conditions in sub-zero temperatures with inmates pulling frozen logs off trees for punishment. The tribunal concluded that prisoners, among them women and children, are forced to work under conditions of extreme hardship. The tribunal chairman declared: "We have presented the truth to the world and no one can say I did not know."

Details of what the world must know are spelled out in such former camp inmates as Julia Vorobyevskaya, 43, a frail dissident author from Leningrad. She was arrested by KGB security police after she boldly organized a small Yiddish study group. "Here you can't chain people's souls," Cheered on by anti-Soviet slander, she spent three years in prison and Siberian camps. One of her main task was making work clothes and uniforms for the Red Army. Shifts stretched to 12 hours to meet impossibly high production quotas. Those who failed to meet them had their meager food ration cut. With gallows humor she and her fellow laborers called the thin, half-pureed fish broth served every day "grave-yard soup." It contained nothing but bones. Prisoners with tiny children often looked on helplessly as the toddlers sickened and died.

Yuri Belov, 42, spent 15 years in prisons, camps and banishment and psychiatric hospitals. He was first arrested in 1963 for writing subversive poems and founding a community of Catholic believers. The charge: anti-Soviet agitation and propaganda. He was sent to camp ZhKh 385/11 in Mordovia, 200 miles southeast of Moscow.

Here 2,000 convicts each assembled 140 wooden chairs per shift, which were sent to a "free" factory in Minsk. There finishing touches were put on before the chairs were exported to the West. Thus the Kremlin could claim the goods were made by "free" workers.

Belov remembers with a sardonic smile the political commissar who told ZhKh 385/11 inmates to be proud because their work earned the motherland hard currency and cost almost nothing. Indeed! The motherland paid Belov and his fellow convicts 60 rubles a month—"free" workers got about 100 rubles—but withheld 75 percent to pay for the minimal camp food, clothing and maintenance.

Sematic Games. Frequently those in Soviet forced labor camps are there on flimsy pretexts such as "hooliganism" or parasitism, "being unemployed." Vladimir Bukovsky, a scientist who spent 11 years in the Gulag, writes, "Such a high percentage of criminality is artificially maintained by the state for economic motives."

One of the first aims of a big new Soviet construction project is an anti-crime campaign. Police round up men and women for the forced labor pool, sometimes resorting to primitive entrapment. Vladimir Borisov, an exiled founder of the underground free labor union SMOT, who now lives in Israel, told me of a friend of his, Ivar Jurkovski. As Jukovski was shopping in a Riga clothing store an old lady asked him to try on a jacket to see if it would fit her son. Police promptly arrested him for shoplifting, and the corrective labor colonies had another worker.

The Ministry of Internal Affairs (MVD) runs the forced labor system, supplying workers to other state agencies. Because workers under armed guard are not suitable for outdoor work, convicts are often put on parole or probation on condition that they perform compulsory labor. Much of the Soviet chemical industry was constructed that way in the 1960s—so today all such workers are known in camp slang as "chemics" or chemists. In the big oil and gas fields they can amount to some 20 percent of the adult population. This forced labor without confinement enables the Kremlin to play semantic games and deny that convicts are used for instance on the pipeline to Europe.

Political dissidents, however, are seldom released even conditionally. Their crimes often fall under the infamous Article 70 of the Soviet Criminal Code which penalizes anti-Soviet agitation and propaganda—a catchall ban on saving, writing or disseminating anything critical of the government.

This was the technique the Kremlin used to crush the Helsinki monitoring group, founded in May 1976 in Moscow to foster compliance with the human rights provisions of the Helsinki accord. Nine months later two of its cofounders, Yuri Orlov, a physicist, and Alexander Ginzburg, a journalist, were arrested and charged with violating Article 70. By last year 34 group members had been arrested and the group's remaining three members disbanded it.

Ginzburg was sent to ZhKh 385/3 in Mordovia. Released in April 1979, he now lives in Paris, where I interviewed him. "We cut and polished glass for chandeliers," he said. "The room was full of abrasive dust. Men spat blood and got silicosis." Their quota, 75 to 90 pieces a day each, far higher than the quota in a free factory. (The Department of Commerce says we import articles of glass from the Soviet Union, but is unable to confirm if this includes chandeliers.)

Orlov and other well-known members of the Helsinki monitoring group, such as Anatoli Shcharansky, are still at forced labor. Orlov works as a lathe operator in a camp set up in the Perm region, near the Ural Mountains. Shcharansky, despite failing eyesight, laboriously hand-weaves eight potato sacks a day in his dimly lit cell at Chistopol Prison 540 miles east of Moscow.

The tortures of hunger and cold drive many Gulag prisoners to desperation. Some chop off their own fingers to get hospitalized. Suicide is often a way out. One method is to race for the barbed wire in full view of a guard. MVD guards shoot to kill, they get an extra week of leave for bagging an escaping prisoner.

Bitter Fruits. Despite such blatant human-rights violations, we and other Western nations continue to buy the fruits of forced labor. Specifically, the United States in 1982 imported:

Chemicals, $118 million worth, particularly anhydrous ammonia for fertilizer. Several Russian chemical plants are integral parts of industrial prison compounds.

Uranium, $10 million worth. Uranium is mined by forced labor at Zheltyye Vody in the Ukraine. Exile sources add a Ukrainian camp at Novaya Borovaya, several Siberian camps at Krasnoyarsk, and another in Central Asia at Uchkuduk. Persistent rumors tell of uranium death camps where workers without protection from radiation last only a few months.

Gold, $4.2 million worth. The CIA notes that forced laborers mine gold at Zerravshan in Central Asia. Exiles say convicts also mine gold at Bodaibo, Artemovsk, Taishet and along the Yenisei River.

Wood and wood products, $3.5 million worth. Logging and wood processing is done in some 356 camps in the Urals, the Northwest, the Volga Vyatka and Siberia. Women fell trees around Kirov and Lake Baikal. Children from 14 to 18 make shipping cases at Novaya Lyalya in the Sverdlovsk region.

Ironically, $40,000 worth. The main model imported by the United States in the Belarus 4-light tractor. Parts are made at a Minsk plant forced labor camp.

What Enforces It. Section 307 of the Tariff Act of 1930 is thus being largely ignored in Washington. Incredibly, I was unable to find a single official there concerned with trade who showed awareness of its relevance to our Russian imports.

Yet the law is clear. It provides that any citizen who suspects a violation can contact the Customs Service, which is required to open an investigation. If available information reasonably indicates a violation the goods must be impounded. To have them released the importer must produce a certificate from the foreign seller attesting that no forced labor was employed in any stage of production or any component of the merchandise.

Why doesn't the United States uphold the law? The question of Soviet goods has just never come up, says a high Customs official in Washington. But if some one shows us that Russian goods entering this country are made with forced labor, we'll enforce it."

Our allies in Europe import far more Russian goods than we do. Last year West Germany alone bought $4.7 billion worth. French imports amounted to $3.1 billion. The Siberian gas pipeline will raise these figures.

Few other countries have a law prohibiting importation of convict-made goods, but most Western nations are parties to the Universal Declaration of Human Rights and other international treaties. They should join with the United States to raise this issue in the U.N.

The time has come to expose before the world Russia's economic exploitation of its citizens. But first we must ensure that our own law, intended to prevent complicity in such barbarity, is enforced.

I have a report of a gentleman who served in a slave labor camp. I would like to submit this for the Record in complete detail, but let me state for the record. Let me read segments of this report. He said, "I, as a long-term prisoner of the Soviet gulag—and let me say here one gentleman I met had been in the slave labor camp for 30 years, 30 years. He was an elderly man, and they allowed him to leave Russia because he would then be on their economy, he would require economic support from them. So they allowed him to come to our country because of pressure. But listen to this.

"I, as a long-term prisoner of the Soviet gulag, know that the labor of prisoners is used on a large scale in a whole series of concentration camps of the Soviet Government. These camps belong to the wood industry, extraction of useful industries, heavy chemical and wood pulp industries, light industries, the food industry." He goes on to say, "Research center for prisons, psycho-prisons, and concentration camps of the USSR published in Abraham Shifrin's 'Guide to Camps And Prisons of the USSR,' thus most of the wood-finishing industries uses raw materials used by slave labor." That is this babushka doll. In the woodworking industry they also use slave labor. The Soviet economy uses prisoners in the mining ore in

dustry in both pit and mines and they extract coal gold uranium copper chromium nickel molybdenum and diamonds. I personally worked in a gold mine. He says the extraction of diamonds also uses slave labor. He goes on to mention all the camps and then he says something which I think is particularly moving.

Odessa Prison (290059 Odessa 59 Establishment YuG 311/76 where there are women's and children's camps. The women work in the textile mill and the children make consumer metal products. I will submit this entire report for the Record.

UTILIZATION OF SLAVE LABOR - EYEWITNESS TESTIMONY

(By S. Karavansky)

INTRODUCTION

I, as a long term prisoner of the Soviet Gulag concentration camp system, know that the labor of prisoners is used on a large scale in a whole series of concentration camps of the Soviet government. These camps belong to the 1 Wood Industry 2 Extraction of Useful Minerals 3 Heavy Chemical and Wood Pulp Industries 4 Light Industry 5 Food Industry.

In addition to my own observations, this article employs the testimony of other former concentration camp prisoners, as well as materials of the Research Center for Prisons, Psychoprisons, and Concentration Camps of the USSR published in Abraham Shifrin, a Guide to Camps and Prisons of the USSR. The source of information or the name of the witness is given for each specific piece of testimony. All addresses whatever the source have been verified and corrected on the basis of the publication, List of Political Prisoners of the USSR (No. 5 situation as of January 5, 1982).

I. The wood industry

The Soviet wood industry has used and still uses slave labor for felling timber. I myself felled timber in Irkutsk Province (Obsa) in the following camps of the Osering Camp 307 Irkutsk Province, Bratsk District (Rayon), Anzebi settlement, establishment UK 272 307, camp 618 Irkutsk Province, Vikhorevka settlement establishment UK 272/618. Camps 642 and 934 from the accounts of prisoners I know that of the lumber camps in the USSR the prisoners still work in the following camps: Kitoiskaia Irkutsk Province; Ust Vymsk Komi Autonomous Republic Dubrovlag Mordvinian Autonomous Republic Several lags in Tulebinskaia Sverdlovsk Province, Vitlas Kirov Province, Krasing Krasnoyarsk Territory (Krasy Osering) Karagopolag Solvas Arkhangelsk Province. A large quantity of lumber is exported from these regions of the USSR to the free world. There are scores of witnesses to the existence of these camps. Here is some of the testimony: N. Akhmetov's and V. Mikhailov's list of prisoners dated 1978 and the address of Camp No. 10 of Krasing which produces lumber for export were published on pp. 211-12 of the journal *Continent* (No. 24 1980). The address of Camp No. 16 is Krasnoyarsk Territory Ural District Osernoe Lava Station establishment UP 288/16.

Thus most of the wood furniture industries use materials produced by slave labor. We must include here the furniture industry, the building materials industry, the paper industry, the wood pulp (cellulose) industry, and a major part of the chemical industries as well as the construction industry.

In the wood working industries they also use slave labor. I personally worked in Camp 019 of the Osvitlag which served the great wood working combine in Irkutsk Province, Chuna District, Chuna Station, Establishment UK 272/019, then in Camp 025 of the Osering camps, Irkutsk Province, Tayshet District, Tayshet city, Establishment UK 272/025, and in Camp No. 11 of the Dubrovlag (Mordvinian Autonomous Republic, Zubova Polyana District, Yavas Settlement). Establishment ZhKh 385/11 in the furniture factory.

From the evidence of long term prisoners taken down by the Prisons Research Center we have the following examples south of Sukhumi in the Kobra Camps with a population of 2,000 they made plywood for export. In Bekabad Uzbek Republic in Camp 64/2, 1,400 prisoners work in the wood processing plant which makes boards. Adzhar Turks Republic, Tashkent Province city of Bekabad Establishment UVa 64/2.

In Vologda there are two camps with 2,500 prisoners each which provide the work force for the plywood factory and the wood processing plant.

Testimony of the Prisons Research Center, Abraham Shifrin (Israel).

II. Extraction of useful minerals

The Soviet economy uses prisoners in the mining ore industry in both pits and mines and they extract coal gold uranium, copper chromium nickel, molybdenum, and diamonds.

I personally worked at the Matrosoi gold mine. Address: Magadan Province, Teraz District, Matrosov Settlement, Establishment 261/1. This campsite is part of the Berlag which has about 50 camps. Besides Berlag the Maglag which also has 50 camps extracts gold. At the Matrosoi camp they extract gold ore which then is enriched at the Matrosov Komsomol Plant. At present the Matrosov mine is not using prison labor but in Magadan Province and elsewhere prisoners work in the gold mines of Yagodnoye, Susuman, Orotukan, Palatka, Vetrennyi, Budenny, Timoshenko, and other places. Besides mine there is the testimony of Mss of USA.

Good for the national treasury of the USSR is extracted at Bodaibo, Irkutsk Province and the prisoners who work the gold mines are situated in three camps. Testimony of A. Shifrin (Israel).

The extraction of diamonds also uses slave labor. In the center of diamond mining at the town of Mirnoye, Tyumen Province, there are no camps but the polishing of the diamonds is left to prisoners. In Solekamsk, Tyumen Province, there are two camps with 2,500 prisoners each, in which diamonds intended for export to Russian Gum stores are polished by prison labor. Testimony of A. Shifrin.

Prison labor is employed in molybdenum, manganese, chromium, nickel (Nornilsk, Krasnoyarsk Territory) and uranium mines in rich sites and even in the Ukraine at Rashe.

In the southern part of the Komi Autonomous Republic in the Vorkuting and Rechlag (Intal) systems prisoners extract coal. Individual mines where prisoners work are scattered over the whole of the USSR. For example according to the Prisons Research Center data, Chernogorsk, Krasnoyarsk Territory. About 5,000 prisoners work in the coal mines. Temir Tau, Kemerovo Province also prisoners extract coal. Shaktin, Rostov Province, 1,500 prisoners work in coal mines. Address: Rostov Province, city of Novo Shaktinsk, Establishment UCh 398/11.

According to the data of the Prisons Research Center prisoners work in the gas and petroleum extraction industry in the following places in the USSR: Asphoronsk Station, Kuibyshev Province, Neftegorsk, Krasnodarsk Territory. The villages of Negoika Parabel and Kolpashevo, Tyumen Province, 4,000 prisoners. The towns of Serafimovich, Volvgda Province, Krasny, Khutka, Seroglazuka, Dosang, Astrakhan Province, Krasnovodsk, Cheleken, Nebit Dag, Turkmen Republic, Shebekino and Lipk, Tula Province, 3,000 prisoners work gas deposits or bore holes in Kitsan, Moldavian Republic, 1,000 prisoners quarry marble. Testimony of the Prisons Research Center, A. Shifrin (Israel).

III. The heavy chemical and wood pulp industries

Slave labor is very suitable in the Soviet system of economic exploitation for conducting work site operations in heavy industry. For example prisoners assemble radiators for the Moskvich automobile factory in Moscow, according to inmates at the Tenth Dubrovlag camp Mordvinian Autonomous Republic, Zubova Polyana District, Establishment ZhKh-385/10. Testimony of S. Karavansky, USA.

Besides I know that in Lviv on Stryi Street there is Camp No. 48 (Lviv Establishment VL-315/48), where the prisoners make motorized agricultural machines. The Prisons Research Center also has data on the following camps: Camp 92/6, city of Gorky, Establishment UZ-62/4. Prisoners work in the unhealthy paint shop of the automobile plant. Camp 62/12 Gorky Province, city of Bor, Establishment UZ-62/12. Prisoners work in a plastics and glass factory. Camp 184/12, Vologda Province, city of Volzhsky, Establishment YaR-184/12. 1,200 prisoners work in the tractor plant. Camp 15/2, Byelorussian Republic, city of Borisov, Establishment 15/2. 1,000 prisoners work at the rubber tire plant. Minsk Mogilev Highway. Near the automobile plant. Settlement Poselok (North Settlement) there is a new prison for women who work at the Minsk Automobile Factory. Camp 48/9, Chelyabinsk Province city of Satka, Establishment YaV-48/9. 1,300 prisoners work at the metal working shop. Soroka Moldavian Republic, 1,000 prisoners make superphosphates. Novaya Lyalia, Sverdlovsk Province, 1,000 prisoners from Camp UShch-36/41 work at the paper mill.

Evidence of the Prisons Research Center, A. Shifrin (Israel).

IV. Light industry

Prison labor is used readily in light industry, which makes consumer goods. I worked in Camp 385/1, Mordvinian Autonomous Republic, Zubova Polyana, District, Sosnovka Station, Establishment ZhKh-385/1. There was a polishing shop where they polished glass parts (lenses) for electric motors. Political prisoners worked here. This shop still exists. Likewise prisoners work here. I also worked in the furniture factory at Camp 385/11, Mordvinian Autonomous Republic, Zubova Polyana District, Yavas Station, Establishment ZhKh-385/11. The factory is still operational and prisoner work there. At Yavas Station I also worked in a garment factory in Camp 385/4, Mordvinian Autonomous Republic, Yavas Station, Establishment ZhKh-385/4. Women prisoners

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1 Translators note: the metric term or camp concentration camp. The designation, e.g., Osvitlag (Dubrovlag) stand for a series of camps under unit administration. The Lag part of the word stands for a town or region e.g. Several lags Northern, Ural, Camps, Dubrovlag-Dubrovlag other camps. For administrative units I have translated Oblast as Province, Rayon as District, Krai as Territory. I have termed the administration unit to be referred to as establishment.

...nd ... of their ... for the ... Soviet factories are ...

In Women's Camp 385/3 for women political prisoners Mordovian Autonomous Republic Town District Barashevo Station Establishment ZhKh 385/3 the women make glass which ... then sold as ... in all of the USSR. Testimony of N. Strokan USA. This witness testifies to the existence of a women's camp at Rostov Yaroslav Province Tutaevskaya ... Control Station Establishment ZhuE 19 where women work in a parking place.

From the testimony of prisoners whom I met at a shipyard I know that in Camp 385/19 Mordovian Autonomous Republic Zubova Polyana District settlement of Lesnoe Establishment ZhKh 385/19 the prisoners make and sell watch casings or dials for the Sverdlovsk Clock Factory. The products of this factory are exported to England. The witness to this are the prisoner Vic Tanska (Israel) K. Lyubarskii (Australia) and M. Budulak Shargorodskii (England).

In the city of Vladimir Camp No. 2, city of Vladimir, Establishment Od i-St-2) the prisoners work and still work in the rooms where they live and eat assembling radios and ... radio parts for the Second Moscow Radio Plant. Besides in this prison the prisoners make (stamp out) zippers and electronic parts. Witness S. Karavans kii (USA). From the testimony of prisoners I know of the following. Chistopol' Prison (422960 Tatar Autonomous Republic city of Chistopol Establishment UZ-148/4) where the prisoners make wrist watches and alarm clocks in the rooms in which they live.

Odessa Prison (290059, Odessa-59 Establishment YuG 311/76) where there are women's and children's camps. The women work in the textile mill and the children make consumer metal products.

Lva Shevchenko Street. There is Camp VL-315/30 in which 1,500 prisoners work at the furniture factory.

From the materials of the Prisons Research Center, we know of the following.

Leningrad. Inmates from the prison work at the cardboard factory that produces boxes for the shoe firm "Skorokhod" (Fast Walker) on the Arsenal Embankment (Arsenal'naya Naberezhnaya). Address of the prison: Leningrad, IZ-45/1.

Leningrad Province. In the Metallostroy (Metal Construction) Camp, prisoners make door locks and mattress springs; in the Ulyanovka and Volkhov camps, 1,200 men and 1,500 women work in the garment factories.

Minsk. Near the bus stop "Proletarskaya Zavod" (Proletarian Factory), there is a camp of 3,000 persons who work in the furniture factories.

Bobruysk, Belorussian Republic. On Bolshevistskaya Street there is a children's colony that makes furniture and cardboard packing cases.

Orsha, Belorussian Republic. There are two camps: UZh-15/12 and UZh-15/6 where the prisoners make metal spoons, knives and forks.

Irpen, near Kiev. The camp makes radio parts. 2,000 prisoners.

Kremenchug, Ukraine. 2,000 prisoners make furniture and electric apparatus.

Nizhni Tagil, Sverdlovsk Province. 300 prisoners in camp UZhKh 415/14 make consumer goods.

[illegible] Republic. In ... [illegible] ... metal ... [illegible] ... for ... [illegible] ... leather goods ... [illegible] ... inspect.

Arctic Krasnoyarsk Territory. 1,000 women prisoners work in the garment factory.

Ust'-Nera, 600 women in Camp Yul 78/2 make ferrite coils for the computer factory.

Naryn Oblast, Buryat Province. 1,000 women prisoners in Camp YuS-321/4 work in a textile mill.

Novokuznetsk, Kemerovo Province. 1,000 women work in a knit goods factory.

Gorku, near Tallin, Estonia. 300 women prisoners make buttons.

Rahel, Kalinin Province. 500 inmates in a high security, severe discipline prison assemble electric switches in the rooms in which they live.

Evidence of the Prisons Research Center, A Bhutan.

V. Food industry

Bhutanian Island, Kurile Islands. 6,000 women prisoners work in a cannery that makes preserves and packs red caviar.

Testimony, A Bhutan (Israel).

Now, what does the law say? The law says, "All goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited."

I tell the people in Treasury Department that it is prohibited. The regulations say clearly this, that if the Commissioner of Customs finds at any time that information available reasonably but not conclusively indicates it, they must prohibit. Reasonably, not conclusively.

We have talked to people, tractor generators, wood products, babushka dolls coming in from the Soviet Union made on the backs of slave labor, political dissidents, Christians, Jews, people who want freedom, and yet we are still allowing that into this country.

Mr. Speaker, the provision that we have in this law would require Customs people and the people at the Department of Treasury to prohibit these goods from coming in. Clearly, Mr. Speaker, this legislation will do it. It is a crime and a blot and a moral crime that we have not done it.

I am pleased with the support of the committee, Mr. Hoyer and the others, and of course the chairmen and so many others on the Senate side. This was unanimous in our conference that with this language we can do it.

The pertinent statute and regulations follow:

I. STATUTE

Section 307 of the Tariff Act of 1930 (19 U.S.C. 1307) provides as follows:

All goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited, and the Secretary of the Treasury is authorized and directed to prescribe such regulations as may be necessary for the enforcement of this provision. The provisions of this section relating to goods, wares, articles, and merchandise mined, produced, or manufactured by forced labor or/and indentured labor shall take effect on January 1, 1931, but in no case shall such provisions be applicable to goods, wares, articles, or merchandise so mined, produced, or manufactured which are not mined, produced, or manufactured in such quantities in the United States as to meet the consumptive demands of the United States.

"Forced labor," as herein used, shall mean all work or service which is exacted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily.

II. REGULATIONS

19 CFR 12.42(e)

"If the Commissioner of Customs finds at any time that information available reasonably but not conclusively indicates that merchandise within the purview of 307 is being or is likely to be imported he will promptly advise all district directors accordingly and the district directors shall withhold release of any such merchandise pending further instructions."

Senator HEINZ. I would yield at this point to Senator Armstrong because I know he has particular interest in your nomination, Mr. Keating.

Senator ARMSTRONG. Mr. Chairman, thank you very much.

I am pleased to join you in welcoming Mr. Keating to the Finance Committee. Mr. Keating, I congratulate you on your selection by the Secretary of the Treasury and by the President to be the Assistant Secretary for Enforcement and Operations.

I do have a number of questions. Mr. Chairman, Mr. Keating and I spent a few minutes together yesterday so that he would be generally familiar with the areas of interest that I wanted to discuss with him.

I would like to begin, if I may, with a sort of general background discussion; and since Mr. Keating is a lawyer and is being appointed to a very important position of law enforcement, and since his background is in law enforcement as a U.S. attorney for the District of Oklahoma, I would like to just start with a little discussion, if we could, about the background of the law and his view of law enforcement.

Could you take a minute and just give us a quick summary of your career as the U.S. attorney for Oklahoma?

Mr. KEATING. Senator, I was nominated by the President and confirmed by the Senate in June of 1981. I was one of the first members of the new team, so to speak, to be on board.

After I became U.S. attorney, the two marching orders which the President gave us as U.S. attorneys at that time were, first, to collect from errant taxpayers those debts owed the United States, which in the past had not been aggressively collected and pursued; and second, to take a real interest in narcotics prosecutions, to identify and prosecute narcotics offenders and to use those statutes which the Congress saw fit to pass to make that a more agreeable and more successful task.

In the first area, my office—as far as the size of the office was concerned—led the Nation in terms of collection. We doubled our criminal caseload, and we quadrupled our civil collections caseload. And I think we did a sufficiently satisfactory job to have my office singled out by the then Attorney General Smith as the outstanding office in the country in the debt collection area, in terms of leading the way for the rest of the country.

In the narcotics area, we created what was then one of the earliest, if not the earliest, narcotics task forces before the regional task forces were formed. I think, even though we don't have fortunately the activity we would have in some of the larger districts, such as Colorado or those districts in Pennsylvania, we identified the significant offenders in our State and were successful in their identification and prosecution. Much of that work has lived after me under the present U.S. attorney. Unfortunately in Oklahoma at that time we were facing the largest public corrections scandal in American history: The county commissioner's scandal, where over 200 county commissioners were successfully prosecuted. I played a role in those prosecutions, and I assisted the other U.S. attorneys and Department officials in that effort.

Senator ARMSTRONG. From what you are saying, which is an answer more forthcoming than I really expected and for which I

am grateful, you really took a very aggressive posture toward enforcing the statutes within your jurisdiction.

Mr. KEATING. That is correct, sir.

Senator ARMSTRONG. Did you always do so?

Mr. KEATING. Yes, sir.

Senator ARMSTRONG. Did you ever neglect to do so, or decline to do so?

Mr. KEATING. No.

Senator ARMSTRONG. Did anybody ever suggest to you that you go easy in the enforcement of some statute?

Mr. KEATING. No.

Senator ARMSTRONG. What would have happened if someone had made such a suggestion to you?

Mr. KEATING. As you know, Senator, the position of U.S. attorney, though he is under the Attorney General, is a rather independent position because he is out in the field. I felt that, as a former legislator, if a statute is on the books, it is the intent of the legislature or Congress that that statute be enforced; otherwise, it would be repealed.

And in the identification of criminal activity, if that criminal activity were identified and there was a statute obviously which was purportedly violated as a result of that identification, I had no discretion but I prosecuted.

Senator ARMSTRONG. And you never had a case arise or a circumstance arise where somebody, say in the Department, or even someone who was your departmental superior, suggested to you that you go easy on a particular case or decline to enforce a particular statute or not bring forward the prosecution of a certain person? That never happened?

Mr. KEATING. As you know, Senator, prosecution is discretionary with prosecutors. In the Federal system, felonies are in the main indicted by grand juries. So, if you identify conduct which you believe violates the statutes, you have to have that, in effect, approved—that decision to prosecute—by a grand jury. The indictment actually would be handed down by a grand jury.

This President and that Attorney General provided us great discretion and leeway in the handling of criminal cases; and I never was faced with that dilemma.

Senator ARMSTRONG. Aside from any individual persons who might have violated a Federal statute, was there ever a circumstance where somebody said: Look, such-and-such a statute—a statute on fraud, a statute on pornography, or a statute of any kind—which you were just directed to ignore, or directed to go easy on. Or where someone in the Justice Department said to you: Look, this isn't very practical; this is an outmoded statute; this is a statute which really we don't expect you to enforce.

Did that ever happen to you?

Mr. KEATING. No, Senator, but with limited resources, obviously sometimes those resources as the result of the action of investigative agencies may be directed toward certain kinds of criminal conduct and not directed at other kinds of criminal conduct. So, sometimes a U.S. attorney would be presented a case to prosecute, and perhaps out there somewhere there was a case you didn't have presented to you to prosecute because of limited resources.

When any cases were presented to me by an investigative agency—and I think most U.S. attorneys followed this practice—our decision was: Will this hold up in court? Will this be successful, in terms of prosecution? We did not wish to waste the resources of the Government in a prosecution which we did not think had an arguable chance of success.

Cases we presented to the grand jury, we intended to prosecute. The grand jury, in its discretion, could decide to or not to indict. Once those indictments were handed down, I and I think other U.S. attorneys attempted to vigorously prosecute them.

Senator ARMSTRONG. Mr. Keating, I don't want to dwell on this point; and in fact, I want to come back at the right time to the question you are raising about the prospects of successful prosecution. But I gather that you never faced a circumstance in which someone for whom you worked in the Department of Justice said: Look, this is a statute that we just don't enforce around here.

Mr. KEATING. No, that never happened to me.

Senator ARMSTRONG. What would have been your response, had that happened?

Mr. KEATING. If an individual in the Department said there was a particular statute we don't enforce around here, if that had happened and I had evidence to suggest a violation of that statute, I think it would be incumbent upon me as the U.S. attorney either to prosecute it or to resign. I think that the responsibility of any public official is clear. A statute, on its face, requires certain action; that action must be carried out.

But, again, there is a slip sometimes between the cup and the lip. Oftentimes, you will look at conduct which may violate a statute and have an arguable opinion as to whether or not that conduct does violate the statute. I have never been presented with the difficulty of having to argue with a superior, or even with a subordinate, on the subject of whether or not certain conduct violates a statute. Normally, that was rather clear-cut in my experience.

Senator ARMSTRONG. You have mentioned that you don't regard the enforcement of statutes within your jurisdiction as discretionary. In other words, whether or not you agree with the statute really has nothing to do with whether or not you would seek to enforce it as the U.S. attorney or as the Assistant Secretary of the Treasury for Enforcement.

Mr. KEATING. The Congress passes a statute, Senator, and I don't think that it is up to anyone to decide whether that statute should be enforced. Again, as I have said, sometimes there may be arguable disagreements on the subject of whether or not particular conduct violates a statute.

If you conclude, however, that that conduct does violate the statute, I think as a U.S. attorney, you are required to submit it to a grand jury; or as a political or public officer you are required to enforce it.

Senator ARMSTRONG. Are you saying, in other words—and I don't want to put words in your mouth; I just want to be sure I understand your viewpoint—that the view of other persons, even powerful persons, in or out of the Government, with respect to the policy underlying some statute would not affect your decision of whether or not to enforce it?

Mr. KEATING. If the facts were there, I think there is no discretion; you are required to enforce the law as the law is written.

Senator ARMSTRONG. Even if you thought that there was some reason to think that the enforcement of the law might offend some foreign power or some foreign government?

Mr. KEATING. Senator, all I can say is that you write the statutes; and those of us who are charged with enforcing the statutes, enforce them. If for some reason you find that statute offensive, it is the responsibility or at least the option of the Congress to repeal or amend it; but I don't think that that discretion exists with a citizen or a public official to decide whether or not Congress intends to have a statute enforced.

Senator HEINZ. Senator, your time has expired.

Senator ARMSTRONG. Mr. Chairman, you may have gathered that I have a number of other questions, which I would like to raise with Mr. Keating at the appropriate time. Of course, I will be glad to withhold now. If you will tell me what your procedure is, I will be glad to conform with it.

Senator HEINZ. The chair would like to recognize Senator Boren; and the chair has some questions.

Senator ARMSTRONG. Very well.

Senator HEINZ. Senator Boren.

Senator BOREN. Thank you, Mr. Chairman. I am apologetic for being delayed at another meeting on my way here this morning; but I first want to welcome Frank Keating before the committee and also to enthusiastically support his nomination to be Assistant Secretary of the Treasury.

I have known Frank Keating for a long time. In fact, we were law school classmates together at the University of Oklahoma back in the late 1960's. As the committee already knows, he has an outstanding record, both in terms of his education and in terms of his experience to serve in this capacity. He has been an agent with the Federal Bureau of Investigation. He has served in the district attorney's office in Tulsa County. He has served in the State legislature, where I might say to my colleagues he made a very outstanding record as a very solid member of our State legislature, with good judgment and very progressive records.

He also has a strong record in terms of trying to clean up corruption in political life. And more recently, before returning to private practice, he served as the U.S. attorney for the Northern District in Tulsa. He has a reputation for absolute integrity. He has not only that reputation generally but he certainly has that reputation with me personally, having known him for a long time.

The only thing that I can say that is bad about him to my colleagues who are sitting here is that he does have the wrong political party affiliation.

Senator ARMSTRONG. Nobody is perfect. [Laughter.]

Senator BOREN. Otherwise, I know of no other mistakes of judgment which he has made. He has made good judgments in terms of his choices of education, career choices, and certainly his good judgment in the choice of a wife and he has a wonderful family. I want to make it clear to the committee that, not only does my colleague from Oklahoma, Senator Nickles, support him, but there is enthusiastic bipartisan support for this nomination.

I heard a little bit of the last question from the Senator from Colorado; and I think that Frank Keating does have the courage and the sense of responsibility to enforce the laws that are on the books in an impartial fashion; and he has the kind of integrity and backbone and commitment to the legal process that we would want to have in that position.

I apologize again, Mr. Chairman, that I wasn't here at the inception of the hearing, but I want to add my enthusiastic support for this nomination.

Senator HEINZ. Senator Boren, we are pleased to have your participation and your support; and with your introduction of Mr. Keating, it is obvious that he comes well recommended by both you and Senator Nickles.

The chair has a few questions for you, Mr. Keating. Over the years, there has been a particular interest among many members of this committee as to the extent to which there are going to be adequate resources for the Customs Service to enforce a number of other laws on the books, particularly against import-sensitive products that are subject to a countervaling duty, antidumping, or other unfair trade penalties.

Do you, in general, support promoting the necessary resources of the Customs Service for enforcements and to ensure that imports that aren't supposed to get into this country don't get into this country?

Mr. KEATING. Yes, I do, Senator.

Senator HEINZ. One of the areas in which you will find yourself—and I think through frustration—intimately involved in are country of origin rulings, which for example with respect to steel is becoming quite intriguing. Steel from one country will go to another country; and all of a sudden, imports are coming from a second country that never before were thought to have a steel industry.

Sometimes, there is a passing justification. Sometimes, there is a real justification. Sometimes there is none at all. And this is a matter of some sensitivity to people. It is not just true in steel, by the way. I think a lot of steel because, just two days ago, I was discussing at some length this particular issue with Commissioner von Raab. If you are confirmed, you will be his immediate superior or supervisor. I guess my question is: Will you please consult and review carefully with Congress any decisions before they become final on such sensitive country of origin rulings?

Mr. KEATING. Yes, Senator, I intend to do precisely that; and any input that you or other members of this committee would have, or your staffs would have, for me, I intend to weigh very carefully.

Senator HEINZ. Another area that is particularly important for Senators who represent a State with ports and borders is, of course, any changes or reorganizations of the Customs Service. Senator Moynihan, I suppose, has been one of the most interested in that; but many of the rest of us have, too.

Will you also consult with the committee in advance on any proposed changes in that area?

Mr. KEATING. Yes, Senator. I think that is a matter of tremendous sensitivity to you and members of the committee; and I think it is only right that you be consulted in advance of those decisions.

Senator HEINZ. Mr. Keating, thank you. Those are very responsive answers. They are everything that we could ask. Now, I believe Senator Armstrong has a few remaining questions.

Senator ARMSTRONG. Thank you, Mr. Chairman. Mr. Keating, I would like to now shift gears, with appreciation for your observations about the general nature of law enforcement; and I would like to ask if you are familiar with the provisions of the Tariff Act of 1930?

Mr. KEATING. Senator, I am to the extent, as I indicated to you yesterday. Before and after our conversations, I made an effort to review the saline provisions of that Act, and I am familiar with them.

Senator ARMSTRONG. Mr. Keating, you are aware, I guess, that one of the provisions of that statute is to forbid the entry into this country of goods produced under conditions of forced labor. Could you take a minute and just explain to us how that process works? In other words, how is that statute enforced, and how has it been enforced in the past?

Mr. KEATING. Senator, I understand that it has been enforced in the past. In a nutshell, the statute prescribes the introduction into the United States of goods, merchandise, which are the product of slave labor. The statute was passed in 1930; it is part of the Smoot-Hawley Tariff. Its mandate is clear, and the statute is on the books.

Senator ARMSTRONG. When you say the mandate is clear, I guess you are saying that that falls into the category of nondiscretionary—not a policy issue to be resolved. There is a statute that simply says that such merchandise may not come into this country.

Mr. KEATING. The statute makes that statement. Obviously, the next question that must be asked is whether or not there is evidence sufficient to warrant the finding that those particular goods or that particular merchandise was manufactured by slave labor. And that, obviously, in a matter which requires investigation, and there obviously in some subjectivity involved. The decision has to be made whether or not the evidence is of such a weight as to warrant the conclusion that it was, in fact, goods or those manufactures were in fact the product of slave labor.

As the Senator is aware, the standard is not one beyond a reasonable doubt or even clear and convincing evidence. The standard is, in effect, a reasonable basis. Probable cause is one of the suggestions that I understand has been made as to what that burden of proof is; but it is reasonable but not conclusive evidence that the particular goods were manufactured by slave labor. So, there is a clear mandate in the statute. Where the argument develops, Senator, is whether or not that evidence is of sufficient weight to meet that burden.

Senator ARMSTRONG. I gather that you are familiar with the provisions of Section 12.42 of the Code of Federal Regulations because what you have just mentioned is, in effect, a pretty good paraphrase of those regulations.

The test that is suggested, or I should say the test which is directed by that provision of the Federal Regulations, is the test of reasonable but not conclusive evidence. I want to come back to

that; but before I do so, I want to just see if we have a common understanding of the history of this.

Are you, by chance, familiar with the terms of a resolution adopted by the Senate, S. Res. 449, that was adopted by the Senate in August 1982? It probably was not a big item on your agenda in those days.

Mr. KEATING. No, it was not.

Senator ARMSTRONG. That is a resolution which was adopted by the Senate asking for an investigation and a report by the Department of State on published reports that the Soviet Union was involved extensively in forced labor; that, in fact, according to those published reports, large amounts of merchandise were being produced in forced labor camps and moving in international commerce. Has that resolution come to your attention at all?

Mr. KEATING. In general terms, Senator. I have not read it, but I am certainly aware of it.

Senator ARMSTRONG. Are you aware of the report which the State Department filed in response to that?

Mr. KEATING. No, I am not, Senator.

Senator ARMSTRONG. I would be hopeful that you would take the time to familiarize yourself with that report. In November 1982, the State Department did issue a report to the Congress, and I hope that in short order you will familiarize yourself with it. If you are looking for where it is located, it is in a file over at the Department, which I expect is available to you; but for convenience, it was published in the Congressional Record in the proceedings of the Senate on February 16, 1983.

May I ask this: Are you familiar with a letter which I sent to Commissioner von Raab on that same date requesting specific information on products entering the United States from the Soviet Union?

Mr. KEATING. I am aware of the letter. Yes, Senator.

Senator ARMSTRONG. Are you aware of a similar letter which I sent to the Under Secretary of Commerce, Mr. Uhlmer, on about the same date in February 1983?

Mr. KEATING. No, I am not. As the Senator may be aware, you and I discussed this yesterday afternoon; and I had voluminous materials to attempt to go through, and I have not completed all of it. There is a great deal of material, as you are well aware.

Senator ARMSTRONG. I understand; and let me say for the benefit of the other members of the committee, that the reason I alerted Mr. Keating to the general line of inquiry which I expected to pursue at this hearing, but I wasn't in any way then or am I now desirous of sandbagging him or trying to lead him into matters that he is not familiar with.

In fact, may I say to my colleague from Oklahoma, that everything which I know about Mr. Keating would indicate that your statement, David, is correct. He is a man of integrity and so on. I am not trying to trap you, Mr. Keating, but I am trying and I intend, before we complete this hearing, to be sure you are fully aware of everything involved in this case; and I want to find out from you what you intend to do about it, and I do urge you to review those documents.

May I now ask if you are——

Senator HEINZ. The chair would like to remind the Senator from Colorado that his time has expired; and we would like to conclude this hearing with Mr. Keating.

Senator ARMSTRONG. Very well.

Senator HEINZ. We had hoped to begin the Targeted Jobs Tax Credits hearing at a fairly early hour. There are many witnesses, as I know the Senator from Colorado is well aware, who have come a long distance and who have travel plans.

On the other hand, I know how important the line of questioning is to the Senator from Colorado. And if it is amenable to both the Senator from Colorado and to Mr. Keating, the chair would propose that this hearing would be set aside so that we might begin the Targeted Jobs Tax Credits hearing.

I would anticipate we could conclude that hearing in about 2 hours; and then we could resume this hearing on Mr. Keating's nomination. That would mean that, Mr. Keating, you would need to be back here fairly close to 12 p.m. I don't know if that is convenient with you or Senator Armstrong, but it would accommodate our witnesses and the chair if we could proceed in that manner.

Senator Armstrong, if it is all right with Mr. Keating, would that be amenable with you?

Senator ARMSTRONG. Mr. Chairman, it would be perfectly agreeable to me to set this aside for the time being. I believe it would be wiser, frankly, if we did not try to pick it up a couple of hours from now because I think, in fairness to Mr. Keating, that it would be useful to him to have a day or two to review the documents. It is not in any sense my desire to try to question him about matters with which he is unfamiliar or with which is only marginally familiar.

So, my suggestion would be that we simply thank Mr. Keating for his appearance here this morning, and ask Senator Packwood to reschedule this or for you to reschedule this at some early date; and we will just pick it up after he has had a chance to take a look at all the materials.

Senator HEINZ. Senator Armstrong, I wanted to make sure that that posed no problems for Senator Packwood. I am advised by his staff that they know of no reason why that could create any problems. It is certainly amenable with me. Senator Boren.

Senator BOREN. Mr. Chairman, I wish to say, to my colleague from the State of Colorado that I have great respect for him and I understand the values that he is expressing in this line of questioning. I would hope that it could be resolved quickly because, obviously, I am among those who have encouraged Mr. Keating to make the sacrifices required, and he is. He has an excellent law practice, and he is willing to leave that because of a very strong commitment to public service. I would just hope that we would not reschedule it so far off in the future that it would become a matter of discouragement to him because there are a number of us who have encouraged him to take this post and to make himself available for it.

We don't want to lengthen it to such a degree that we discourage the person that the Senator from Colorado and I both want to have here in public service.

Senator ARMSTRONG. Senator, I want to assure you that that isn't my intent, and I want to assure Mr. Keating that it isn't my intent. I am ready to go forward at any time Mr. Keating is ready to come back before this committee; and I think that there would be no doubt that that would be very soon. I am sensitive to what Senator Heinz has said. In effect, this hearing involves only three or four of us, and the hearing which is scheduled to have begun a few minutes ago involves quite a number of people who have traveled a long distance. If that is agreeable to you and to Mr. Keating, we will just pick it up again as soon as we can.

Senator HEINZ. Senator Armstrong, I think that is an excellent suggestion. I gather it serves a second purpose, which is that it will give Mr. Keating a chance to review a number of documents.

Senator ARMSTRONG. And it will all give us a chance to get a good night's sleep. For those of us who were up kind of late last night, that would be most welcome. I should be more alert the next time we meet, I trust. Thank you, Mr. Chairman.

Senator HEINZ. Very well. Mr. Keating, we thank you for your appearance here today. I will ask Chairman Packwood to reschedule you at the earliest possible mutually convenient time, and I thank you for your responsiveness to the questions posed by the chair. You are excused.

Mr. KEATING. Thank you.

[Whereupon, at 9:55 a.m., the hearing was recessed.]

[The prepared biographical data for Mr. Keating follows:]

A. BIOGRAPHICAL:

1.	Name:	Francis Anthony Keating II (Frank Keating)
2.	Address:	2216 East 26th Place Tulsa, OK 74114
3.	Date and place of birth:	February 10, 1944 St. Louis, Missouri
4.	Marital status:	Married. Catherine Helier Keating
5.	Names and ages of children:	Carissa Herndon Keating, Age 12; Kelley Martin Keating, Age 10; Anthony Francis Keating III, Age 5.
6.	Education:	Georgetown University, Washington, D.C. 1962-1966 A.B. (1966) University of Oklahoma, Norman, Oklahoma 1966-1969 J.D. (1969)
7.	Employment record:	1969-1971 Federal Bureau of Investigation, Special Agent, United States of America, Washington D.C., Seattle, Washington, San Francisco, California 1971-1972, District Attorney of Tulsa County, Assistant District Attorney, Tulsa County, Oklahoma 1972-1981 Blackstock Joyce Pollard Blackstock and Montgomery, 515 S. Main Mall; Tulsa, Oklahoma, Attorney, Partner 1972-1981 Oklahoma House of Representatives, Member (1972-1974) Oklahoma State Senate, Member (1974-1981) Minority Leader (1980-1981) 1981-1984 United States Attorney for the Northern District of Oklahoma, United States Department of Justice, Tulsa, Oklahoma: Chairman, Attorney General's Advisory Committee for United States Attorneys 1984-Present, attorney at law in private practice in Tulsa, Oklahoma (1984-June, 1985 Leonard Snider and Keating,

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8.	Government experience:	See Number 7 above. 1979-1981 Trustee and Vice Chairman, Metropolitan Tulsa Transit Authority, Tulsa Oklahoma; 1968, Member, Oklahoma Boat and Water Safety Commission
9.	Memberships.	Member, American, Oklahoma and Tulsa County Bar Association; Phi Alpha Delta Legal Fraternity; Chairman, Professional Division United Way of Tulsa (1985); Member, Board of Directors, Family Mental Health of Tulsa, Inc. (1982-1985); Volunteer Fund raiser, Palmer Drug Abuse, Inc.; American Heart Association; Counsel, Arthritis Foundation (1984-1985)
10.	Political affiliations and activities:	Member, Oklahoma Republican Party State Executive Committee and Tulsa County Republican Party Executive Committee (1975-1981); Deputy State Finance Director (1968); Tulsa County Chairman, President Ford Reelection Committee (1976); Oklahoma State Chairman, Lawyers For Reagan (1980)
11.	Honors and Awards:	Outstanding Service Award from Society of Former Special Agents of the Federal Bureau of Investigation (1985); Service Award from State of Oklahoma NAACP (1985); Named by Pope John Paul II Knight of the Holy Sepulchre (1983)
12.	Published writings:	1983 Oklahoma Bar Journal, "Federal Practice Primer" and 1985 Oklahoma Bar Journal, "Oklahoma LBD Reform"

CONTINUING CONSIDERATION OF NOMINATION OF FRANCIS A. KEATING TO BE ASSISTANT SECRETARY OF THE TREASURY

WEDNESDAY, DECEMBER 4, 1985

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC.

The committee met, pursuant to recess, at 10 a.m. in room SD-215, Dirksen Senate Office Building, Hon. William L. Armstrong presiding.

Present: Senators Armstrong and Grassley.

Senator ARMSTRONG. The committee will come to order.

We are reconvened to continue to hear testimony from Mr. Frank Keating, who has been nominated by the President to be Assistant Secretary of the Treasury for Enforcement.

Mr. Keating, we are delighted to welcome you back. I am particularly delighted to welcome you because the last time we were together was a moment where the Senate had been in virtually round-the-clock session. And I appeared at the committee session in a daze and so if my questions reflected that state of mind, I beg your forgiveness. I thank you for returning.

I also want to tell you that in the several days that have intervened, a number of our mutual friends have been in touch with me to tell me of your outstanding service as U.S. attorney for Oklahoma and to say privately what a number of them have said publicly on your behalf of how well qualified you are. And I just pass that on to you, and urge you to savor the moment. My experience is in public life those observations are all too infrequent. So I just thought I would tell you that now, and that will make up for what may follow after you take office over there at the Treasury Department and everybody starts hurling the darts and slings and arrows of outrageous fortune at you.

I'd like to pick up, if we may, exactly where we left off. When you were here before, we had a good general discussion, which I appreciated very much, by the way, about the nature of law enforcement, your duties as a law enforcement officer in Oklahoma, your concept of law enforcement. And I don't want to go back over that except to recall that you testified that your conception of law enforcement was that it was not really discretionary in the sense that you would see it as your duty to enforce the law whether or not it was a popular matter of enforcement, as I recall.

I think you even testified that in the years that you had been U.S. attorney for Oklahoma that no one had ever approached you

and had said lay off the enforcement of this statute or that statute or lay off the enforcement of this person or that person. Do I recall that correctly?

Mr. KEATING. That's correct, Senator.

Senator ARMSTRONG. And, in fact, I think you testified in some words or another that such a suggestion would be improper and would not be a suggestion that you would entertain.

Mr. KEATING. That's correct, Senator.

Senator ARMSTRONG. And it's my recollection also—that I probably put you to the question that you would conceive it your duty to go ahead and enforce the law if unpopular, even if the result of that might be to offend powerful people—those for whom you might be working or even some powerful foreign power such as a foreign government.

Mr. KEATING. We didn't get into the specifics of that, Senator, but that is my conception of what my responsibilities are to conform exactly to the statutes as passed by this Congress.

Senator ARMSTRONG. OK. That's good. That's what I wanted to know.

Starting from that point—and I don't think there is any sense in going back over the things that we talked about before—as we broke up, I suggested that you might want to review some of the issues that arise out of the Tariff Act of 1930, particularly, those provisions which preclude the entry into this country of products produced with forced labor. Have you had an opportunity to do that?

Mr. KEATING. Yes, I did, Senator.

Senator ARMSTRONG. Am I correct in my assumption that the enforcement of this statute is within your responsibility as the Enforcement Assistant Secretary?

Mr. KEATING. That is correct, Senator.

Senator ARMSTRONG. Is that what you call yourself? Enforcement Assistant?

Mr. KEATING. I don't know, Senator. There have been several euphemisms applied to that position. I know it's Assistant Secretary of the Treasury for Enforcement and Operations, though I'm informed that the operations side is being dropped. Maybe that's a sign in advance of lack of confidence or will or both. I don't know, but I understand they are going to change it to Assistant Secretary for Enforcement, and leave it at that.

Senator ARMSTRONG. Well, I'm sure that's not the case.

Have you looked at section 307 of the Tariff Act?

Mr. KEATING. Yes, I have, Senator.

Senator ARMSTRONG. That, in brief, states what? Could you just give us a paraphrase of that?

Mr. KEATING. Well, in a nutshell, Senator, as I read the statute, it states that any goods, wares or merchandise which are manufactured or mined with the use of convict or slave labor is to be banned from import into the United States.

Senator ARMSTRONG. Are you familiar with the provisions of title 19, section 1242 of the Federal regulations?

Mr. KEATING. Senator, the Federal regulations affecting the operation or the enforcement of this statute, I have reviewed as provided me by the Department. I have not had a copy of the Federal

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Register per se, but I have reviewed the salient portions of the Federal Register as they apply to this particular statute. But not every word of the Register. That was not provided me on the way home.

Senator ARMSTRONG. Could you give us sort of a summary in layman's terms of what those regulations provide with respect to the importation of goods produced by forced labor?

Mr. KEATING. Hopefully, I won't put a Z before an A, but as I understand, Senator, the delegation of authority to identity violations of this statute is surrendered to the Commissioner of Customs. And the Commissioner of Customs, in this case, Mr. Von Robb, is charged under those regulations to identify evidence of the existence of goods which are sought to be imported or are imported into the United States which are made in whole or in part by slave labor. When evidence is brought to his attention that that is the case, it's incumbent upon him at that point to conduct an investigation.

Once the investigation is conducted and he determines reasonably but not conclusively that those goods were manufactured in whole or in part with slave labor, then it is his duty under the statute to ban their import.

Now there are other provisions under those regulations for a judicial hearing. There is a provision for a rule to determine to what extent the goods are the product of slave labor—whether it's substantial or a portion of those goods or, in effect, a de minimis portion, all of which will go into the decision-making process on his part as to whether or not he should exclude those goods.

But the threshold investigation and the threshold responsibility is surrendered to the Commissioner of Customs by the Secretary.

Senator ARMSTRONG. And does he have discretion to enforce this or not, based on policy considerations or foreign relations considerations?

Mr. KEATING. I don't see where that discretion exists, Senator. The only discretion, as we got into last week, might lie in the question of whether or not there is sufficient evidence to warrant a finding that, in fact, those goods are made in whole or in part by slave labor.

But once that evidence is presented, again reasonably but not conclusively, then it's his responsibility to ban their import.

Senator ARMSTRONG. You've referred to the regulation. I want to read you about half a paragraph out of that regulation and seek your legal advice about it. The operative portion of that regulation reads as follows:

> If the Commissioner of Customs finds at any time that information available reasonably but not conclusively indicates that merchandise within the purview of Section 307 is being or is likely to be imported, he will promptly advise all district directors accordingly, and the district directors shall thereupon withhold the release of any such merchandise pending instructions from the Commissioner as to whether the merchandise may be released otherwise than for exportation.

When it refers in this regulation to what the Commissioner finds, are we talking about here the term 'finds' in the sense of discovery? In other words, are we talking about a finding that is simply something that comes to his attention? Is it a notice if somebody tells him that this is happening or are we talking about the kind of finding that is the product of an administrative hear-

ing, a quasi-judicial process? What does the word "finds" mean, as it appears in this regulation?

Mr. KEATING. Well, Senator, let me say at the outset I'm a layman in this process because I'm a lawyer from Tulsa, OK and have not been called upon to give my legal opinion as to how these particular regulations should be construed, and I've had limited experience in this area.

But I can say that my understanding, my threshold understanding, of that particular section is that it is not anticipated to be any administrative or quasi-judicial finding, but merely a finding which is the result of investigation by the Commissioner of Customs or his designee that the goods are reasonably but not conclusively the product in whole or in part of slave labor.

If he makes that determination based upon his own independent investigation, then the statute requires him at that point to ban the import of those goods.

Senator ARMSTRONG. And so the "finding" we are talking about here is not the sort of finding that might be referred to as the finding of a court or the finding of an independent tribunal. It just defines it. If he knows of it, if he learns of it, then he is required to take certain steps.

Mr. KEATING. That's correct. But I think in the course of making that decision, he has to look down the road and presume that someone may attempt to challenge that finding. A court may at some point be called upon to make a determination of whether or not that finding was reasonable but not conclusive.

So I think that even though he may in his heart of hearts feel that these particular goods or merchandise were the product of slave labor, he must have sufficient evidence to meet that burden of proof in order to prevail down the road, if, in fact, his action is challenged.

But other than that, you are correct, sir.

Senator ARMSTRONG. Let's go on to that because that is, I think, at the heart of the issue. What he is required to find must be reasonable but not conclusive. Could you talk then about that standard of proof. Obviously, reasonable implies that he wasn't acting in a capricious or illogical manner. It certainly implies that he had some reason to think that these goods were moving in international commerce and either had come into this country or threatened to come into this country. But how much does he really have to have? Does he have to have evidence beyond a shadow of a doubt? Clearly not, I guess.

Mr. KEATING. No, Senator.

Senator ARMSTRONG. Does he have to have a preponderance of evidence?

Mr. KEATING. Well, as the Senator is well aware, in the legal process there are various burdens. In a criminal case, for example, the kinds of criminal cases I've tried on behalf of the state and the Federal Government in State and Federal prosecution, the burden of proof is proof beyond a reasonable doubt, which is in some cases defined, at least in our district, as proof of such a convincing character that you would rely upon it unhesitatingly in the most important of your affairs.

Obviously, this standard is not that high. However, if this standard is preponderance of the evidence as you would have in a civil case, I don't know. I have not been in a position to review the cases which really construe that language.

But it is not the sort of burden that would be required in a criminal case. I would say the preponderance of the evidence maybe, probably, as in a civil case is the sort of burden that a judge ultimately require that the Commissioner be able to meet.

Senator ARMSTRONG. Well, I wasn't so much thinking about what a judge might ultimately require the Commissioner meet as to what he had to have at the outset for this finding. And it appears to me that perhaps all that was being asked here was more analogous to probable cause. That if some reputable citizen were to come forward and say, look, here comes some forced-labor goods, that that would constitute probable cause. It would constitute a reason to believe that was not capricious; that it was a fair assumption. Something that a prudent person would take into consideration and act upon in the way that this regulation requires.

And I want to pursue the process of the regulation because it seems to me that this initial finding doesn't require hardly—that the regulation actually provides a road for resolving those doubts that may arise as to whether or not the initial finding, the initial discovery, of this illegal activity is borne out by the facts.

But before I do that, may I welcome Senator Grassley and say to my colleague that I'm glad to have you here. If you want to make a statement now or ask questions of Mr. Keating now, feel free to do so because Mr. Keating and I are probably going to be a while, and I'm not in any rush.

Senator GRASSLEY. I don't want to either ask questions or make a statement, but I did want to impress upon Mr. Keating that even though I have not been in the forefront of this issue like you have been—in fact, I've just been very much on the fringe of it; supporting your efforts, voting with you on the floor of the Senate on this very issue you have just discussed—I want to tell Mr. Keating that I share your views, the Chairman's views, on this issue. And I would like to have this administration be as helpful to Senator Armstrong in his crusade as can possibly be. And I want to be here just in support of that effort and to make that statement, and to compliment Senator Armstrong, and to say that I hope you will give it the fullest weight and consideration in your performance of duty.

Mr. KEATING. Thank you, Senator.

Senator ARMSTRONG. Thank you very much, Senator Grassley. I'm grateful for your interest, not only today, but on many other occasions when you have expressed that concern for the people who are the victims of forced labor.

Mr. Keating, then, to return to this process established by the regulations. When the Commissioner finds or as I paraphrased it, when he learns that these goods are either coming into the country or threaten to come in, because they don't actually have to be moving for him to take an action, what is it that he is directed to do? Send a message to the district directors, as I read that.

Now when the district director who receives this message or the directors receive the message, they're going to say, wait a minute, chess sets, farm implements, whatever it might be are coming into this country or are about to come into this country in violation of the law—what is it that those district directors are required to do?

Mr. KEATING. Well, they have no discretion. If the Commissioner determines that that burden of proof is met and he issues his directives to the district directors then at that point they are called upon to ban the import into the United States of those goods, as directed by the Commissioner.

Senator ARMSTRONG. Literally to hold them in a warehouse and forbid that they be taken out of the warehouse except for export?

Mr. KEATING. That's correct.

Senator ARMSTRONG. Now if some person, either the importer or the exporters, thinks that they are being injured by this process or objects to the process, what happens?

Mr. KEATING. My understanding, Senator—and, again, at the outset I mentioned that I was not provided all of the Federal Register material as to the administrative process for my review, but as I understand it, they have an opportunity at that point to object to the action of the Commissioner and to ultimately have that objection resolved by a court.

Senator ARMSTRONG. By a court or by a hearing held by the Commissioner?

Mr. KEATING. Well, I'm saying ultimately they can have that resolved by a court. There is an intermediate step, as I recall, which includes the Commissioner.

Senator ARMSTRONG. Well, let me ask you to speculate for a moment with me on this. If the regulation talks about not only merchandise which has entered the country, but which threatens to enter the country—and let me see if I'm quoting that exactly. Let me quote it exactly. "Threaten" is not the word that is used. "Merchandise within the purview of Section 307 is being or is likely to be imported." So you are talking not only about actions which have occurred, but the Commissioner is charged with the responsibility of preventing prospective violations of law, which it seems to me also goes to the burden of proof issue. Obviously, if some citizen comes forward and says, look, I know that there is a transshipment coming in from Holland, Denmark, Mexico, or someplace and it was produced with forced labor, obviously, there couldn't be a standard of proof beyond a shadow of doubt. In fact, at that state it's hard for me to see how there could be a standard of proof even of preponderance of evidence.

About all you could possibly have at that point is probable cause because the offense hadn't been committed at that point. It was just about to happen.

But as I read the regulation, once the Commissioner gets to that stage, reaches that state of mind, that finding; not the result of an administrative hearing, but just a state of mind, just a conviction on his part, then he sends out this telegram or letter or twix or whatever it is or calls his district directors on the phone and says, hey, wait a minute, don't let this particular kind of merchandise come in, and if any injured party objects to that, they are entitled to a hearing. And at that point, the Commissioner makes a decision

based upon the evidence that is presented at that hearing. Is that correct?

Mr. KEATING. That's my understanding, Senator.

Senator ARMSTRONG. Would it be your understanding that he is at that point governed by the regular rules of evidence for hearings of that type?

Mr. KEATING. I really don't know the answer to that question. I would say that at that point because that discretion is given him and because it is expected that he has some evidence to support his decision, there has got to be some independent evidence over and above his own personal belief that would sustain his position.

Senator ARMSTRONG. I understand that.

Mr. KEATING. So to that extent, yes, there would have to be some evidence which would be able to be admitted.

Senator ARMSTRONG. But I was thinking about the hearing process itself. Is this a hearing that would have the hallmarks of fairness about it? In other words, would it be your assumption that at such a hearing that the injured party would have a chance to come forward? Would the party have a chance, if he wished to do so, to present evidence? That anybody within reason who had information bearing on the issue would have a chance to come forward?

Mr. KEATING. Well, my understanding is that when you are dealing with an individual's property right, certainly the elements of fairness should enter into a decision as to whether or not that property right will be denied them.

But I would say that the evidence which is required at that stage certainly is not the evidence that would be required in a formal judicial proceeding, whether it's civil or criminal proceeding.

Senator ARMSTRONG. In other words, it would be less formal, but still some requirement of fairness and due process, but not at the same level of perfection that might be affected, say, in the U.S. District Court?

Mr. KEATING. I think so, Senator. Again, I'm getting rather speculative with you, and I apologize for that. I understand that to be the case, but, obviously, hopefully if I am confirmed I will have the access to legal minds who will provide the exact standards that we need.

Senator ARMSTRONG. Well, once this hearing is concluded—I don't mean this hearing; I mean the Commissioner's hearing, if he ever gets around to having one—once that hearing is concluded, he enters a different kind of finding than he had in the first place, the first finding was just a conviction, just a discovery on his part that an offense was committed or about to be committed.

Mr. KEATING. Senator, let me interject this, if I may. I'm not certain I agree with you on that score. I think that when the Commissioner makes a decision to ban the import into the United States of what he regards as slave-made goods or to whether the goods are already in the United States or whether they are on their way to the United States, he has to have sufficient evidence to meet that reasonable, not conclusive, standard.

Now does that mean a hunch on his part? No. I would say that he has to have independent evidence which will meet that burden. It is not a proof beyond a reasonable doubt. It may well not be a

preponderance of the evidence burden. But he has to have some independent knowledge over and above a hunch on his part——

Senator ARMSTRONG. I understand. But he has to believe it.

Mr. KEATING. That's correct. That would require independent evidence.

Senator ARMSTRONG. Well, let's go back to that reason to believe it in just a moment. I wasn't focusing on that, but let's come back to it in a moment because it is really crucial.

But in any case, at the conclusion of this Commissioner's hearing, he either decides, yes, my original finding was correct, in which case the merchandise in question may not be imported into the country and the only alternative open to the owner of the merchandise is to export it or to leave it sitting in the warehouse under seal—is that correct?

Mr. KEATING. That's my understanding, Senator.

Senator ARMSTRONG. Or he can decide that, no, I was wrong, in which case they can go ahead and bring it in.

Mr. KEATING. I think that's correct as well.

Senator ARMSTRONG. Now if he decides against an importer, against the importation of a particular product, that decision is reviewable in a court of law. And at that point, I assume that the Commissioner would be held to a higher standard of accountability with respect to the process that he follows. That that would be governed—you tell me, but I'm assuming that would be governed by the same sort of review standards that other Federal agencies are required to meet. That they can't have acted in an arbitrary or capricious manner; that, in fact, they have to be following the law.

Mr. KEATING. I'm not sure the burden of proof, Senator, would be any different, but I am certain that an independent third party, a Federal judge in this case, would certainly fly speck the reasonable but not conclusive evidence requirement and make sure—at least my experience with Federal judges has been that way—make sure that the evidence which is relied upon by the Commissioner is, in fact, bona fide evidence which meets that standard.

Senator ARMSTRONG. As a person who has practiced law as a prosecutor and I guess also on some occasion as a defense attorney, does that seem a fair process to you?

Mr. KEATING. Does that seem a fair process?

Senator ARMSTRONG. Yes.

Mr. KEATING. Yes, it does, Senator.

Senator ARMSTRONG. Is it fully protective or reasonably protective of the rights of people who are proposing to import goods into this country?

Mr. KEATING. I think any time you have a third party review the actions of an administrator, that's a fair process, provided there's a burden of proof and an opportunity to be heard, an opportunity to present evidence of your position. That's a very fair process.

Senator ARMSTRONG. Would you agree that the real place where the factual determination of whether or not any particular class of merchandise is banned by this law occurs is really at the Commissioner's hearing?

Mr. KEATING. Well, I think any time you make the decision to take action against property, against property rights, you have to have the evidence. And I would hope that the Commissioner would

not take action unless he had the evidence which would sustain him all the way through the process. That's the kind of prosecutor I always was. I believe that if you had a case, you had a case. If you don't have a case, you don't have a case. But I never rolled the die. I made sure that my case was put together properly and I went with it. And I was reasonably fortunate with that process.

Senator ARMSTRONG. OK. Then let's go back to what we were talking about a minute ago, about the reason to believe. What is his reason to believe? Is the statement of a reputable citizen a reason to believe? Does that constitute the kind of evidence on which a Commissioner might enter such a finding?

Mr. KEATING. You know, we are at the point of conjecture. I would say it depends. And I'll harken that to an analogy. As a U.S. attorney, if a citizen were to call me and say an individual was embezzling money, for example, from a financial institution, that individual's evidence—that you had personal knowledge of that fact—was sufficient certainly to get my attention and to warrant an immediate investigation based upon that allegation—now if that investigation turned up nothing, then we would have to back up and determine whether or not that one person's word was sufficient to carry the day. Sometimes it was; sometimes it wasn't. It depends on the specific facts of each case.

But, certainly, information provided by a citizen to the effect that a particular good is made with forced or slave labor would get my attention, and I would order an immediate investigation to determine whether or not that information was, in fact, accurate.

Senator ARMSTRONG. With respect to likely breaches of this law where obviously eye witness testimony would not be available—you can't testify to something which has not yet occurred—with respect to that kind of a breach, a likely occurrence of this forbidden act, would published reports in reputable publications be sufficient for the Commissioner to enter such a finding?

Mr. KEATING. Well, I think, again, it's difficult to say, Senator. I think it depends upon what information was set forth in that published report. If a published report merely says, for example, the sky is falling, in and of itself that's not sufficient evidence for any of us to believe that the sky is falling. You want to know who is saying it, and, hopefully, you are going to make an effort to independently verify it. It depends on whether or not in that published report an individual is mentioned. He can be approached requesting further information.

For example, as the Senator is well aware, when this act was used to ban the import into the United States of crab meat from the Soviet Union, there were sufficient eyewitness accounts or sufficient accounts from, I believe, Japanese, former Japanese prisoners of war, to the effect that these products were the product of slave and forced labor to warrant action on the part of the Commissioner to ban the import of those items for many years.

That is the kind of evidence that, obviously, is the best kind of evidence to have. If that is not available, then what comes next? I really don't know. It would have to be taken on a case-by-case basis. But I think the statute is very clear. We are to ban the import into the United States of slave-made goods, and we should

vigilantly attempt to secure evidence which would show that that, in fact, is occurring, and ban those goods if the evidence is there.

Senator ARMSTRONG. Since I'm really not familiar with what you have just described, let's get into that for a moment.

I am aware that a group of Congressmen called to the attention of the Commissioner that this product was being produced in the Sakhalin Islands by forced labor, and that as a result of that, that the Commissioner did, in fact, ban the importation of this product from the Soviet Union. But I am not aware, and I would be glad to have you tell me about, the kind of corroborating testimony that was available on that.

Mr. KEATING. Are you talking about the crab meat?

Senator ARMSTRONG. Yes; just the episode you just mentioned.

Mr. KEATING. Oh, but this is only—some material I reviewed indicated that the allegations came from former Japanese prisoners of war, but it didn't go into specifically how many people testified and how many people came forward and how verifiable the information was.

But I'm saying that's an example of where the Commissioner acted with evidence, and his action was sustained as a result of the evidence that was presented, was obtained.

Senator ARMSTRONG. Well, the nature of the testimony is critical because if the standards that must be achieved is eyewitness kind of stuff where somebody will come forward and swear under oath, first, I was a prisoner in a gulag, or I saw a prisoner in a gulag, and I saw that prisoner produce that piece of merchandise which we have marked for identification, and, in fact, that piece of merchandise can be shown to other direct testimony to have entered the United States, then that is a standard which in a practical matter is almost impossible to ever achieve.

Mr. KEATING. Well, Senator, I'm not suggesting that this is the standard that has to be met. I'm saying that that ideally is the best, of course.

Senator ARMSTRONG. Of course. But in any instance, to your knowledge, has that standard ever been applied in the enforcement of this statute?

Mr. KEATING. Well, again, Senator, I don't know. I did review quite a voluminous number of materials. For example, detailing goods made by convict labor in Mexico. There was considerable eyewitness evidence to the effect that these goods were manufactured in a prison environment.

Senator ARMSTRONG. Generically.

Mr. KEATING. That's correct.

Senator ARMSTRONG. So certain kinds of merchandise were manufactured under forced-labor conditions, and that they would be described in a certain kind of way—that they were wicker baskets or that they were sarapes or whatever they were—not in that particular piece of merchandise.

Mr. KEATING. That's correct.

Senator ARMSTRONG. So you are saying that testimony which provides a reasonable but not necessarily conclusive basis to believe that specific items or classes of merchandise are, in fact, being produced under forced-labor conditions is sufficient to ban

the importation of goods meeting that description in the United States?

Mr. KEATING. Yes, I think it is.

Senator ARMSTRONG. In other words, if somebody comes forward and says, look, I have first-hand information that chess sets were produced in the Soviet Union by forced labor and those chess sets or those farm implements or those Olympic medallions looked like this, here's a description of them, and then somebody else comes forward and says, well, here is one that I bought in Camden, NJ which is stamped on the back "Made in the USSR," that's the kind of level of proof you think we need to reach.

You don't have to prove that a particular item, you don't have to follow it from the gulag to the retailer, in order to make the case. Is that what you are saying?

Mr. KEATING. Again, this is not proof beyond a reasonable doubt. It's reasonable but not conclusive. And in the case of Mexico, there was an admission, as I recall——

Senator ARMSTRONG. Well, you are not going to get an admission from the Soviet Union. You are just not going to get that.

Mr. KEATING. No, no, but what I'm saying if by the authorities that these were convict-made goods, which, of course, would be prescribed by the statute, they were excluded under generic basis.

In the Soviet Union, a closed society, those kinds of confirmations are few and far between, I am sure. But I would not think that you need specific eyewitness, eyeball identification of each individual good to be marched from the gulag into the kitchen of an American housewife, for example.

What I am suggesting, though, Senator, is that when you attempt to make an exclusion, say, the generic class—you mentioned agricultural implements, generators, refined petroleum products; some of these others that Commissioner Van Robb indicated were manufactured by slave labor—you do require throughout the process—you are required to meet that burden of reasonable but not conclusive. That burden can best be met by witness identification, and other source of identification, intelligence sources, what have you, that may result in sufficient evidence to meet that burden.

Senator ARMSTRONG. I thank you. Let's move on from title 19 of this regulation, except to ask this: Insofar as you know, does this regulation continue to represent the policy of the Government?

Mr. KEATING. Yes. As a matter of fact, I talked to Secretary Baker, Senator, about this issue just before we had our hearing last time, and he indicated to me that it was his policy as Secretary of the Treasury to enforce this statute, and it was his policy that we would attempt to review all of the evidence to date that had been assembled and secure new evidence to make sure that if the evidence is there the statute is enforced. And that is my personal commitment.

Senator ARMSTRONG. So the regulation states the policy, and that is consistent with your own personal belief as well?

Mr. KEATING. That's correct, Senator.

Senator ARMSTRONG. I thank you.

Let me go on now to the question of the resolution which I asked that you would take a look at expressing the sense of the Senate. I'm referring to Senate Resolution 449, which was the part of the

97th Congress, 2d session. On August 17, 1982, I submitted this. And, in general, it is a resolution which requested a report on forced-labor practices in the Soviet Union.

The background of it, you will recall, is that a number of published accounts in what I believe to be reputable journalistic sources all over the world were saying that the Soviet Union was engaged in forced-labor practices. And had been, as I told my colleagues at that time, sort of my impulse to fly off the handle and really crack down on them. And I thought better. Rather than doing that or asking or requiring specific action, I just asked for a report. And that's the resolution in which I asked for a report.

Have you read that?

Mr. KEATING. Yes, I have, Senator.

Senator ARMSTRONG. Are you aware that the State Department did in due course send a report?

Mr. KEATING. Yes, I am.

Senator ARMSTRONG. And you are familiar with that?

Mr. KEATING. Yes, I am.

Senator ARMSTRONG. And you are familiar with the CIA document that was incorporated into that report; into the State Department's report?

Mr. KEATING. Yes, I am, Senator. Right.

Senator ARMSTRONG. And do you recall that there was a large number of products identified by the CIA in their response as having been produced by forced labor in the Soviet Union?

Mr. KEATING. I did see those.

Senator ARMSTRONG. Several dozen such products.

Mr. KEATING. That's correct.

Senator ARMSTRONG. Are you familiar with the letter signed by 43 Members of the Senate on October 25, 1983 in which—addressed to the Secretary of the Treasury, requesting enforcement of the ban on forced-labor provisions with respect to a list of 36 products?

Mr. KEATING. Yes, Senator, I reviewed that document.

Senator ARMSTRONG. Are you familiar with provisions of House Concurrent Resolution 100, which, by the way, passed by a unanimous vote—one of the historical side light. It passed 402 to nothing—expressing the sense of the Congress that the policies of forced labor are morally reprehensive, and that the President, at every opportunity and in strongest terms, to express to the Government of the USSR the opposition of our country to these policies? Has that come to your attention?

Mr. KEATING. Not the House resolution, Senator.

Senator ARMSTRONG. OK. I'm going to ask my staff to make that available to you.

Mr. KEATING. I assume the terms are very similar to the Senate resolution.

Senator ARMSTRONG. Very similar, but it's important, I believe, as you embark upon your new career, that you have that in mind. That the House has spoken on this matter repeatedly and in the most forceful terms. And, if anything, some members of the House have been far less restrained than we have been here in the Senate. I've tried to take, and I think most of my colleagues have tried to take, sort of a methodical, step-by-step, plod along one step at a time sort of an approach to this because it is by its nature

such an inflammatory issue. That we don't want to handle it in an emotional way. That we want to handle it in a dispassionate manner that is consistent with what we see as the traditions of impartial law enforcement rather than Soviet fashion.

In the House, if anything, they have been less restrained than we have.

Mr. KEATING. Well, as the Senator is well aware, the statute does not apply solely to the Soviet Union. It applies to any nation which exports goods made of forced or slave labor. So the statute to be applied properly under the law must be applied to all nations equally.

Senator ARMSTRONG. Are you familiar with a letter under date May 23, 1984 over the signature of 84 Members of the House of Representatives petitioning the Commissioner of Customs to enforce the law with respect to 36 products cited in the CIA report?

Mr. KEATING. Yes, I am, Senator.

Senator ARMSTRONG. Are you aware of the law suit filed on behalf of about three dozen Members of the House, two Senators, not including myself, and the Washington Legal Foundation seeking enforcement of Section 307 of the Tariff Act?

Mr. KEATING. I am, Senator.

Senator ARMSTRONG. That suit, as I understand, was dismissed on a couple of grounds, one of which was lack of standing in the Members of Congress to bring the suit. So the suit was not successful in its attention.

I brought it to your attention simply as an indication that in addition to writing letters and passing resolutions that about 40 Members of the Congress took the next step, which was to file a law suit.

I would just say to you I did not join in that subject. Not because I was unsympathetic to it, but because I didn't think it had a reasonable chance of being successful. I felt it would fall on legal grounds.

Mr. KEATING. Well, Senator, with due respect to the statute, I did review documents from that law suit, and I did review the resolutions or copies of the resolutions presented by the Senator, a copy of that resolution which was adopted unanimously by the Senate. And I'm informed of the House resolution as well.

But in fairness to the statute, the statute speaks for itself. It's a clear, unequivocal mandate even in the absence of a law suit or even in the absence of resolutions by the House and Senate.

Senator ARMSTRONG. A man after my own heart. That's what I'm trying to get on the record.

You are familiarized, correct, with the State Department report, which you referred to a moment ago, the February 1983 report, in which they listed quite a number of classes of products. And if you have not received a copy of that, I would like to furnish that to you. I think you have previously——

Mr. KEATING. I have received a copy, and I have reviewed it, Senator.

Senator ARMSTRONG. So that in summary up to that point, we had a Senate resolution requesting a report from the State Department; we had a State Department report citing the CIA document, listing several dozen. It seems to me a hundred or so products

which were produced by forced labor, and pointing out perhaps as many as 4 million Soviet citizens are living and working under conditions of forced labor. Parenthetically, may I note, under conditions of extraordinary deprivation—physical hardship, torture, a kind of dietary standard which is worse even than Hitler's camps during World War II. But that's not the legal issue that we are addressing this morning.

Then we have a series of actions by Members of Congress—the resolution of the Senate calling upon the Commissioner to enforce this statute; resolution by the House seeking the same thing; a letter of petition by three dozen Members; and finally a law suit.

Now after all that happened or as some of these things were happening, I should say during the period that this was transpiring—because it was not entirely seriotic—the Commissioner of Customs did, in fact, make a finding that 36 products were being imported or were likely to be imported into the United States from the Soviet Union which had been manufactured under conditions of forced labor. Are you familiar with his finding or his letter explaining his finding on September 28, 1983?

Mr. KEATING. Yes, I am, Senator.

Senator ARMSTRONG. Mr. Keating, in your opinion, in reaching this finding, was the Commissioner of Customs acting in accordance with the regulation?

Mr. KEATING. Yes, he was.

Senator ARMSTRONG. In your opinion, does his finding reflect a reasonable though perhaps not conclusive standard of proof?

Mr. KEATING. That's difficult to say, Senator. Again, I was looking at this chronologically really historically. I saw where apparently the Commissioner reviewed the State Department findings. Apparently, the Commissioner reviewed CIA material to which I was not privy, and made his findings, drew his conclusions based upon the evidence presented in those documents. I would not prejudge Commissioner Von Robb, but I would presume that he acted in good faith, and at that time he had reasonable but not conclusive evidence to sustain his position.

Senator ARMSTRONG. Let me just note in passing that that report is certainly available to you. It was published in the Congressional Record at my request. And so if at some point you would like to review it, that's where it is.

Mr. KEATING. Are you stating the State Department report?

Senator ARMSTRONG. Yes.

Mr. KEATING. Yes, I have reviewed it, Senator. Yes.

Senator ARMSTRONG. And, well, that incorporated the CIA report.

Mr. KEATING. What I'm saying is that, again, I have not talked to the Commissioner about this. I was not here then when that decision was made, so I can't say what other additional evidence may have come into the mix. But I would presume it was in good faith, and he felt that he had the reasonable but not conclusive evidence to sustain his position.

Senator ARMSTRONG. OK. So he reaches his finding. Then what happens?

Mr. KEATING. My understanding—and this is where I'm confused, and I must say my confusion was several thousand miles

away when I continued my review of these documents and my research into this issue. But apparently that list of 36 was reduced to 5 based upon additional evidence.

Now my question to the Commissioner if he were here would be what was available to you when you compressed your list of 36 or so to 5 that was not available to you when you first presented your list of 36. I don't know. Maybe there was additional new evidence which convinced him that his reasonable but not conclusive burden was too high as to the other 31. I don't know. But that is some matter of curiosity to me.

Senator ARMSTRONG. Let me go back to the regulation. Rightly or wrongly, either properly or improperly, he reached a finding that 36 classes of merchandise were, in fact, entering this country or likely to enter this country in violation of this statute and this regulation. Now from my limited perspective, it seems to me that his duty at that point is as follows: "He will promptly advise all district directors accordingly and the district directors shall thereupon withhold release of any such merchandise pending instructions from the Commissioner as to whether the merchandise may be released otherwise than for exportation."

Did he do that?

Mr. KEATING. Yes. My understanding is he did do that, and then he requested that Treasury sign off for the purpose of publishing the order in the Federal Register on his action. And that's when the review and the rereview process began.

Senator ARMSTRONG. If you will excuse me one moment.

[Pause.]

Mr. KEATING. Let me say this, Senator. I reviewed it. And, again, I'm sort of in a betwixt and between, sort of the pickle in the middle here. I reviewed I suppose the proposed order. Now whether it was issued, I don't know. But I saw a proposed order to the district directors.

Senator ARMSTRONG. Well, Mr. Keating, there are several places where this statute could have easily been enforced, but it wasn't. And this is one of them.

As you read that statute, did he not have a duty to do that? And I'm not talking about a duty to publish something in the Federal Register. I'm talking about a duty to either pick up the telephone or to send a letter or to send out a staff memorandum or however he usualiy communicates with his directors and simply say, look at it, here are 36 items that we think are getting ready to come into the country; don't let them in. Isn't that what that says?

Mr. KEATING. My understanding, Senator, is that he had at that time the power to do that and if following review of the evidence presented to him he concluded that he had sufficient evidence to reasonably but not conclusively sustain his position, then he had the duty. That is correct.

Senator ARMSTRONG. And it's your opinion that he did communicate that to the district directors?

Mr. KEATING. Well, I should back up and correct myself. I noticed in the materials that I was provided at your request after our last hearing what appeared to me to be a proposed order or an order to the district directors. Now, again, I don't know if it was

ever issued. Apparently it was not issued. But he did have that power.

Senator ARMSTRONG. I want to keep myself here in a mode of asking questions rather than assorted facts, but I will tell you this. That I am not aware that this order was ever issued to the district directors. What it says here in the regulations is that he shall thereupon send out that notice. I don't think it was ever sent out. If I am mistaken about that, I would welcome a chance to have the record corrected. But I don't think I am mistaken about that.

I think he did something quite different than what is mentioned in this regulation. I think what he did is sent up a proposal to publish something in the Federal Register.

And I guess my next question is: Does this regulation require that he do so?

Mr. KEATING. My understanding is it doesn't. I may be in error there, but my understanding is that the Commissioner is delegated that authority and to do it on his own.

Senator ARMSTRONG. In other words, in your opinion, recognizing as you have already said that you could be wrong or you could after you are confirmed in office change your mind, but as of this morning it is your opinion that he didn't have to buck that upstairs.

Mr. KEATING. Well, let me say it's not a question of changing my mind. It's a question of not having all the facts.

Senator ARMSTRONG. I understand that after you get down there and have a chance to talk to all the lawyers that you might come to a different opinion than as of this morning. And I'm not trying to sandbag you either.

Mr. KEATING. I understand.

Senator ARMSTRONG. But I'm just trying to find out as of this morning you don't think he had to send that up to somebody else to look at it.

Mr. KEATING. That was another matter of curiosity, Senator, because my impression from the materials provided me was that he had the authority on his own.

Senator ARMSTRONG. Right.

Mr. KEATING. That is correct.

Senator ARMSTRONG. OK.

Mr. KEATING. I may be in error, but that was my impression.

Senator ARMSTRONG. Well, then, as one indication of that—I mean aside from just reading this—I guess one way we could find out whether or not he had that authority would be to look to the precedent. Have you had any occasion to check to see whether on any previous occasion when this law was enforced whether or not the Commissioner of Customs in the process of enforcing it bucked it upstairs to some other official in the Treasury Department?

Mr. KEATING. Well, the materials that I reviewed included the examples of Mexican penal labor goods. My understanding is that all of those decisions were made at the Commissioner level.

Senator ARMSTRONG. How about the Sakhalin Islands' case? Did they send that up to the Assistant Secretary of the Treasury for Enforcement or to the Treasury Secretary or to the President or the United Nations or anybody or did the Commissioner just do it?

Mr. KEATING. I don't know, Senator.

Senator ARMSTRONG. Would you check that?
Mr. KEATING. Be glad to.
Senator ARMSTRONG. Would you furnish it for the record?
Mr. KEATING. Be happy to.
Senator ARMSTRONG. Thank you. I'd be grateful.
[The information from Mr. Keating follows:]

Question. On any occasion, prior to the 1983 proposal to prohibit the importation of certain Soviet goods, did the Commissioner of Customs refer the issue to higher authorities within the Treasury Department before taking action under section 307 of the Tariff Act of 1930?

Answer. The Treasury Department's records did not indicate whether any previous import bans were or were not referred by any commissioner to his superiors. We should recognize, of course, that an informal discussion of a proposed action probably would not be recorded in any document.

Since there may be some misunderstanding about it, I also want to clarify the basis for Commissioner von Raab's referral of his proposed action to the Treasury Department in September, 1983. As I understand the Commissioner's actions, he believed that his intended action on 36 categories of Soviet products would have had a major impact on commercial interests in the United States. Therefore, although he was not required by law to give advance notice, he chose to advise the public of his intended action by publishing a notice in the Federal Register, which required the approval of the Treasury Department.

That requirement did not exist at the time that any previous import prohibitions were effected.

Senator ARMSTRONG. I will speculate with you. Based upon reasonable but not conclusive evidence that, in fact, he didn't buck it up to anybody; that the Commissioner—and by that I don't mean Mr. Von Robb, I mean the Commissioner in office—in a number of cases, which we will get to in a moment, in fact, simply did exactly what the regulations says. When he found out they were coming into the country, he said, wait a minute, we can't have this, it's against the law. And he put a stop to it. And that he didn't check it with anybody.

Now, then, just to continue on that subject, let me direct your attention to the question of whether or not this law has been enforced and, indeed, whether it's enforcible. Somebody is running around that thinks maybe you just can't enforce the law like this.

Are you aware of whether or not this law has been previously enforced? We mentioned the Sakhalin Islands' case, and I guess we mentioned the wooden furniture from Mexico. Are you aware of any other cases?

Mr. KEATING. I believe that it has been enforced in some eight cases. As I recall from my review of the materials, it applied not only to Mexico but several other countries.

Senator ARMSTRONG. Canada.
Mr. KEATING. Yes. That's correct, Senator.
Senator ARMSTRONG. South Africa.
Mr. KEATING. Yes.
And, of course, in that one instance, the Soviet Union as well.
Senator ARMSTRONG. Spain.
Mr. KEATING. That's correct.
Senator ARMSTRONG. Bolivia, Austria, Japan.
Mr. KEATING. I believe there were eight countries involved. I may be in error there, but——
Senator ARMSTRONG. Taiwan.

Mr. KEATING [continuing]. The materials I was given indicate there were some eight.

Senator ARMSTRONG. Dominican Republic.

Mr. KEATING. Yes.

Senator ARMSTRONG. I think we will put in the record at some appropriate spot a brief of each of the cases. Do you have any reason to think, since you have indicated that the regulation is consistent with your own—since you have indicated that you support in principle the purpose of the regulation, and that the regulation, insofar as you are aware, continue to represent the policy of the Government, let me then ask before we get off this part of it whether you see any reason why this is not an enforcible regulation. Is there anything inherently about it unenforcible?

Mr. KEATING. Senator, as I mentioned to you when we talked privately before the last hearing, my personal ideological or philosophical belief as to the statute or the regulation is irrelevant. I happen to be in sympathy with the statute. What is relevant is if I am confirmed by the Senate my requirement, my responsibility to enforce the statute as written—if the Congress sees fit to repeal or amend that statute, that is their discretion; that is not mine. So there I am in sympathy with the statute.

My personal views really are not terribly relevant to whether it——

Senator ARMSTRONG. I understand that. And, indeed, I applaud your attitude and only wish that more people in public service had that sense of duty and faithfulness to the law.

But my question was this: I look at this statute, which seems to be pretty clear on its surface. There isn't anything very complicated about it. I look at the regulation which doesn't seem to be very complicated. I look at wooden furniture from Mexico in 1953 and 1958, crab meat from the Soviet Union, gymnastic equipment, at hammocks, at garments, at handicrafts, at South African coal, booklets from Canada, stuff from Puerto Rico, handmade rugs from Portugal, Canada and all these other countries; it looks to me like it has been enforced, but I want to just ensure that you don't see anything about this that is by its very nature unenforcible or any loophole that Congress ought to try to close here.

Mr. KEATING. Senator, I think the statute and the regulations are both alive and well.

Senator ARMSTRONG. If in the course of your tenure as the Enforcement Assistant Secretary you discovered something about this regulation or statute which was not enforcible, would it be your intention to come back and let us know about it?

Mr. KEATING. Yes, it would.

Senator ARMSTRONG. I think we have nailed down the question of whether or not the Commissioner had the authority to go ahead and issue those regulations without consulting with somebody, so I don't want to go back into that.

But I do want to make the record say that instead of doing so that the Commissioner sent this document to the Assistant Secretary, your predecessor, Mr. John M. Walker. The Assistant Secretary took the action which delayed and which ultimately prevented the Commissioner of Customs from enforcing the statute. That is, from doing what this regulation says, which is to send a message to

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Now if this is all starting to sound like a policy issue sort of cloaked in the garb of a legal proceeding, if that is what it looks to you, I must admit that's what it looks like to me. But I think I have accurately portrayed what happened.

And what I was going to ask you is this: Are you aware after he sent up the new list of five products—are you aware of what happened then?

Mr. KEATING. Well, I'm aware that on May 16, 1984 Director Casey notified Secretary Regan that apparently their view of this matter had changed. And as a result, Secretary Regan notified Commissioner Von Robb that there was insufficient evidence to meet that burden.

Senator ARMSTRONG. On what date did Mr. Casey write that letter?

Mr. KEATING. I understand May 16, 1984.

Senator ARMSTRONG. On what date did the Secretary of Treasury write Mr. Von Robb?

Mr. KEATING. I think the same day.

Senator ARMSTRONG. I think so too. No hearings were held, were they?

Mr. KEATING. Don't know, Senator.

Senator ARMSTRONG. Well, the reality of it is that I—have you read the subject or communications from the CIA?

Mr. KEATING. Yes. The May 16 letter?

Senator ARMSTRONG. Yes.

Mr. KEATING. Yes, I have, Senator.

Senator ARMSTRONG. Well, not only the letter but the other.

Mr. KEATING. Right.

Senator ARMSTRONG. The reality of it is that they decided they didn't want to testify and they didn't want to compromise their sources, none of which, in my opinion, anybody is asking them to do. They didn't say that what they had referred to was untrue. What they said is they didn't want to stand behind it anymore.

Now that's quite different. I am not aware that the CIA came back and said we were wrong. The State Department is relying on the CIA's report, an official report. It was not something that appeared in the newspaper. This is an official document in response to an official request that said there are 4 million people behind the barbed wire in the gulag; there is a massive forced labor operation in the Soviet Union; the 100 products that we can identify, classes of products, are moving into international commerce that are produced under conditions of forced labor.

I'm not aware that the CIA ever said, no, that's wrong. What they said is we no longer wish to stand behind that. Is that a fair characterization?

Mr. KEATING. Well, again, Senator, not having an opportunity to talk to any of the principals involved in that decision, it is difficult for me to go beyond the written word. But what struck me as curious was a phrase in Director Casey's letter to the effect—and I am paraphrasing—that we do not have the evidence whether any goods imported from the Soviet Union into the United States are the product of slave labor, which would appear to be somewhat at variance with the rather emphatic statements that we heard previously.

Now why that different opinion was drawn, I don't know. But I found that rather curious.

Senator ARMSTRONG. Did you find it curious that they managed to receive the letter, consider it, reflect upon it, shop it around and issue an order the same day?

Mr. KEATING. I understand they have excellent staff.

Senator ARMSTRONG. Pretty good service.

Mr. Keating, at this point, I would like to recess briefly and ask you to just standby while I go over and vote. I shall return immediately. I think it will take me about 8 or 9 minutes. And it's my hope that we can wind all this up very shortly after I return. You've been very cooperative.

And I think this is quite useful. I appreciate that you probably had some other things you would like to do this morning, but this is important business. And my own appreciation of it is that what you and I are doing is on behalf of a few million people who otherwise would not be represented here. They can't speak their right or move freely and who, in fact, are trapped behind the barbed wire, and they just don't have anybody speaking up for them unless it's you and me.

And so while I apologize for taking your time, I think it's worth it. And if okay with you, we will pick up again in about 10 minutes.

Mr. KEATING. Yes, sir.

Senator ARMSTRONG. Thank you.

[Whereupon, at 11:18 a.m., the hearing was recessed.]

AFTER RECESS

Senator ARMSTRONG. Mr. Keating, I thank you for your patience, and I hope and believe that we can wrap this up pretty quickly.

I am really grateful to you for not trying to evade any of this, but just giving me your candid opinion. You have obviously done that, and it is most helpful. I have said to you privately and I will say for the record that my desire is not to sandbag you, not to embarrass you or harass you. In fact, let me say parenthetically, I think one of the most reprehensible practices around here is when Members of the Congress use committee hearings as the forum to persecute the witnesses. That isn't the proper function of a committee hearing. The proper function of a committee hearing is to elicit information. If they want to persecute somebody or jump on somebody, they have got lots of other opportunities to do that. But I don't have that motive in any case.

In fact, everything that I know about you and other things that you have told me about your views of law enforcement and enforcement of this statute, in particular, causes me to admire you so I'm grateful to you for your cooperation

I do want to finish up with a couple of items. I think that we got this clearly on the record.

If the Commissioner of Customs were to seek your advice as to whether or not he needed approvals from you or someone else to enter such a finding and send the message which we have referenced in the regulations to his district directors, it is your present opinion that he does not need such approval. I understand that you

his district directors, and in the event of somebody being injured and protesting, holding a hearing to determine ultimately the facts. Is that your understanding of what Mr. Walker did?

Mr. KEATING. I have not discussed this with Mr. Walker, Senator, and I don't know why Mr. Von Robb requested that Mr. Walker approve his action. But as I understand it, that is what he did. And from there, the review process started and that's why we are here today.

Senator ARMSTRONG. Well, are you familiar with a letter of October 11, 1983 to Mr. Von Robb from John M. Walker, the Assistant Secretary?

Mr. KEATING. I have reviewed a number of letters. What is the content of that one, Senator? I don't know the date.

Senator ARMSTRONG. Basically, the content of it is don't do it; don't go forward. Let me read you a little of it. He references Von Robb's September 28 memo and he says:

> As you know from our meeting of October 5, Treasury is seeking from other agencies further clarification of the available information plus any additional probative information which they may produce. This additional information, if any, will assist us in determining the appropriate course of action to be taken in this matter.

Mr. KEATING. Yes, I'm familiar with that.

Senator ARMSTRONG. Was any of that required in your opinion?

Mr. KEATING. Well, as a layman, Senator, I can say that I was under the impression and still am, subject to being corrected by facts to which I am not privy at this time, that the Commissioner had the authority to do it on his own when he first decided to act.

Now why he went further, I don't know. It may be that during the swim of events when he reduced his list from 38 or 36 items to 5 he felt that he needed additional study. I don't know.

Senator ARMSTRONG. Well, I'm coming to that. We are still at the point where he has got 36 items on his list.

Mr. KEATING. All right.

Senator ARMSTRONG. Let me read you the next paragraph out of this. This is continuing from Mr. Walker's letter to Mr. Von Robb:

> Following consultation of the general counsel of the Department and a review of the past administrative practice of Customs in this area, it is my determination we should not proceed in this or other Section 1307 matters without first articulating a set of standards which describe the legal elements and the quantum nature and burden of proof that should be required in the exercise of Section 1307 authority.

So what happened is this: Although I agree with your conclusion that Mr. Von Robb did not have to submit this to the—well, to anyone. All he had to do is just send out a telegram to the district directors. He didn't do that. But once he submitted it, then your predecessor came up with the notion that they ought to have some kind of evidentiary standards. Are you aware of whether or not there had been any effort in the previous 50 years this statute had been on the books to develop such standards?

Mr. KEATING. No, I'm not, Senator.

Senator ARMSTRONG. Would you check that for me when you get in office over there and send me a note so that I can stick it in the record at this point?

Mr. KEATING. Yes.

[The information from Mr. Keating follows:]

Question. Are you aware of whether or not there has been any effort in the previous 50 years of this statute (Section 307 of the Tariff Act) to develop standards for exercising the statute?

Answer. No. The Treasury Department has no records that would indicate a previous attempt to write improved legal guidance for implementing section 307 of the Tariff Act.

Senator ARMSTRONG. I'm going to guess that this is a departure from past practices, and that, in fact, when they had gone after the hammocks and the coal and the pamplet and all these other things that we mentioned earlier they didn't do that. Suddenly, when it became this particular set of products produced under this particular set of circumstances, being imported from this particular country, suddenly they started scrambling around to figure out what are we doing here.

And, in fact, I will further speculate that—this isn't even based on reasonable evidence. This is based on my own intuition, which could be completely wrong—but that what they really did is started shopping it around through some interagency committee, and they probably asked somebody over at the State Department how is this going to go down with the Russians. I don't know whether that's true.

I do not see anything in the statute or the regulations which requires or authorizes such a procedure. But I'll bet anything there is some playback.

Mr. KEATING. Well, of course, Senator, I don't know either. I don't know what went on.

Senator ARMSTRONG. I understand. I'm not asking you to verify it. I might ask you this: Would you do that? If the morning after you are confirmed if Mr. Von Robb sends you another one, would you call up the State Department and say, hey, what do you think of this?

Mr. KEATING. I don't think that anybody has that discretion, Senator. I think if the evidence is there and there may be good argument as to whether or not the evidence is there, the Congress has spoken, this statute has been in force and effect for many, many years, it has been enforced for many years, and there is no discretion. It is a mandate to do certain things when the evidence is presented. And I don't think the opinion of the State Department is relevant to the enforcement process.

Now I would say in fairness to Mr. Walker—and I have not discussed this with him—perhaps he concluded that because the cases that we have been discussing, the eight or so countries, may not have been contested because the countries made the admission themselves and we had eyeball witnesses, and they knew that they would lose. Those are not difficult cases.

In this case, if he felt he was going to get into a law suit, he wanted to make sure he had the evidence and really have the burden met—can we win this one? And that perhaps went on, and I think that's probably a fair concern on his part.

But I don't know why he contacted other people if, in fact, he did.

Senator ARMSTRONG. I want to pursue the question of winning or losing. You have made the point today and you made it when we were together last that you didn't want to go into court with a half-

baked cake; that you didn't want to lose. I suppose you must have lost some cases sometime. I guess every lawyer loses one now and again. But, in general, your disposition is that you are not eager to have an involvement in legal matters in which you end up on the losing side. And I understand that.

Mr. KEATING. Well, I don't think that's entirely fair, Senator. I think what I'm suggesting is that whenever I would expend Government resources, taxpayer monies, I think that I should have a reasonable likelihood of success. Now that doesn't mean you are going to win all of them. It doesn't mean you are going to lose every one. It just means that you are, hopefully, going to have a reasonable likelihood of success. And what does that mean? It means the evidence is there going in. Maybe it will blow up in your face when the case if formally heard, but you still go into it with a reasonable likelihood of success.

As a prosecutor, I never attempted to destroy somebody's life to make a point. I felt that if the evidence was there, there was credible evidence to meet the burden, the standard that was required in the criminal system, the case would proceed. Some of them were successful. Most of them were. Some weren't successful.

You ought to have some feeling that you have got a good case.

Senator ARMSTRONG. Fair enough, fair enough.

Are you aware that some people think that if we had permitted the Commissioner to go forward and prohibit the importation of these 36 classes of goods that some or all of them might have been knocked down in the hearing which he held or in a subsequent court action?

Mr. KEATING. I have not been informed of that.

Senator ARMSTRONG. Well, there are some people who feel that that's the case. That if Mr. Von Robb had gone ahead, that some or all of those simply would not stand up either in his own hearing or in the court action which followed. If that happened, if in these hearings he determined that some of these were not in violation, maybe none of them were, would that be a setback in some way for the process, for the Department or for the Government?

Mr. KEATING. A setback in the sense that you are without a successful resolution. But if at the time you make the decision the evidence is there in your honest belief, and you lose, that's not a setback at all except for the success of your case, but you went into it with a clear head and with an honest conscience.

I would say that it would be irresponsible to file on everybody just to make a point if you didn't think we had the evidence.

Senator ARMSTRONG. I would agree with that.

But, Mr. KEATING, the thing I want to be sure is in clear perspective is this: That success does not necessarily imply banning any particular group of products or any products. If the Commissioner had gone forward and if some or all of the 36 products which were proposed to be banned appealed, and if a hearing were held and if the evidence when really laid out showed that his initial finding was not justified, it doesn't seem to me that that's a failure or a setback or a humiliation.

But, in fact, it is an indiciation of our legal process. That even dealing with individuals or countries that we might for some reason think are reprehensible, even when we have sort of an intu-

itive knowledge that they are engaging in labor practices, indeed, in rights practices when we find reprehensible, that if we didn't have enough evidence to meet our own legal standards, that our system protects them too. That doesn't strike me as a defeat. It strikes me as a victory for the process. Nor do I think it's an embarrassment to the Commissioner or the Department in that circumstance.

Now if the hearing showed that it just went off half-cocked, then that would be wrong. But one of the reasons why I am so very much interested in this issue is precisely because nobody went off half-cocked. Senators became interested in the problem based upon reports which were published in reputable journals. Based upon those reports, we requested officially by resolution of the Senate a report from the State Department. The State Department sent us an official report. Not a rumor, not a telephone call, not a letter; an official report to the United States Senate.

This report listed 100-such items. Based upon that and other information available to him, the Commissioner of Customs designated 36 of them, and said, well, I find that these 36 fit that description.

It appears to me that had he gone ahead with the hearings, even if some of them didn't hold up, that that would not have been a bad thing; it would have been a good thing.

But that isn't what happened so let's move on to the process. After Mr. Walker wrote in this letter on October 11, 1983, no standards of evidence were developed, and based upon that, as I understand it, Mr. Von Robb by looking at these standards said, OK, based upon this higher test, having jumped through all the hoops, I'm going to send up a list of five products. Are you aware of that? Are you aware of his finding on those five products?

Mr. KEATING. Yes, I am. I am not aware of the new standard of evidence, though. Whether it was a higher standard or even a different standard, but I am aware that the list was considerably shortened from some 33 products to 5.

Senator ARMSTRONG. Well, let me just refer you, then, to a letter addressed to the Secretary of the Treasury from the Commissioner of Customs on this subject in which he set forth the list of products and which he summed up, if I may just read you two sentences: "This finding is based upon the evidentiary material previously provided to you for review. Accordingly, I recommend that you approve the document as soon as possible."

That's exactly what happened in my understanding. If that is not correct, if I am mistaken in my understanding, I'd be grateful if you would correct me, and I in turn will correct the record so that there isn't any misunderstanding.

What I gather happened is Mr. Von Robb sent in the 36, and for reasons which I don't fully understand he didn't go ahead and notify the district directors, but instead he bucked it upstairs. I believe in contravention through prior practice, but anyway, he did it. And then, Mr. Walker said, oops, we have got to have some better standards of evidence than what we have got. Those standards were developed, and Mr. Von Robb then came back with a list of five.

have reserved the right to study the matter further, but that is your present position.

And I believe you have testified that you would be willing to come back and chat with us further if you have some second thoughts on that subject.

Mr. KEATING. That's correct, Senator.

Senator ARMSTRONG. Have you ever met a person that has been imprisoned in one of these gulags?

Mr. KEATING. I have not, Senator.

Senator ARMSTRONG. Would you like to? Would you be willing to?

Mr. KEATING. Yes, Senator.

Senator ARMSTRONG. I think I could arrange that. I have met some of them. I served as a member of an international human rights commission; talked to several of them on that occasion; conducted a hearing in this building, as a matter of fact, a couple of years ago with people who testified as to their servitude in forced-labor camps, and found it quite touching.

The reason I raise this is that my concluding inquiry really is this: In the light of all that has happened, how you feel about this as an issue. And before I get to that, I might inquire as to whether you are aware of the most recent action by the Congress with respect to the appropriation bill of the Treasury, Post Office and general Government appropriation. Are you aware of an amendment that was offered in the Senate on that bill?

Mr. KEATING. By you, Senator?

Senator ARMSTRONG. Yes.

Mr. KEATING. Yes, I am.

Senator ARMSTRONG. In general, you are aware that that's an amendment that would have caused some funds to be terminated if action on this is not forthcoming by March 1. You are aware, also, I guess, that when that reached the House that they took my benign little amendment and broadened it somewhat. And, in fact, as I understand, the amendment which the House preferred and which was adopted by the conferees literally would have withdrawn all the funds for the office which you seek to occupy on March 1 if action if not forthcoming. Are you aware of that?

Mr. KEATING. Yes, I am, Senator.

Senator ARMSTRONG. Well, I guess you are also aware and probably relieved that that amendment was knocked out on point of order. From my viewpoint, that is a perfect resolution of the amendment. It is not my purpose to cut off the funding for your agency or the Treasury Department or anybody else. But the way it worked out emphasizes that Congress continues in both Houses to regard this as a very serious issue.

And so my question is this: Is this a matter which you would regard as an important issue? Is it a matter which you would give high priority to when you take office as the Assistant Secretary for Enforcement?

Mr. KEATING. Yes, it is, Senator. Let me add this postscript, if I may. I was not familiar with the specifics of this issue nor the emotion or the importance until such time as you brought it to my attention. Since then, I have reviewed the documents provided me by the Department as well as a number of the independent journalists

that you referred to detailing the horrors of convict, prison-made, force labor practices, specifically in the Soviet Union. I would not have been privy to that material but for your insistence.

As I indicated to you, though I am in sympathy philosophically and ideologically and otherwise with the statute, it doesn't alter the fact that the statute is there to be enforced no matter what my sympathy may be.

As a result of the information you provided me and as a result of the information the Department has provided me, I think it has opened my eyes to the need to see to it that this statute is enforced. I spoke with the Secretary about it at some length, as I indicated earlier. He indicated to me that he shared your view and my view, and was examining the evidence to date, requesting and reexamining evidence which had not been thoroughly examined or examined at all, and he has indicated to me that it is his position that the statute is clear on its face and should be enforced provided the evidence is there.

And that is a priority of mine. And I would welcome any further information that you could provide should the Senate seek to—be kind enough to confirm me—any additional information you would have; any additional conversations you would wish to have, I would be happy to set aside any time whatsoever for that purpose.

Senator ARMSTRONG. Mr. Keating, let's close on that note. The underlying reality here is this: That the law is clear. I believe it is usually enforcible. My own conviction is that the Treasury Department does wish to enforce it. I'm not so sure that has formerly been true, but I have discussed this with Secretary Baker at some length and I am convinced his heart is right on this matter. Now whether or not he or I would agree on the procedures, I don't know. Don't care about that.

If he finds that the procedures are inadequate or if you find the procedures are inadquate, if you will come back over and tell us how you would like to reformulate that statute, I think I can tell you the Congress would be willing to make a statutory change. I don't think that's necessary.

But what I think is intolerable is to ignore our own legal processes. When the prisoners started coming out of Hitler's death camps in 1944 and the question that they asked was where have you been; where were all the people of the civilized western world when Hitler is building those camps and sending millions of people around the continent in box cars—where were you? Well, where we were is we were trading with them. We were giving aid and comfort. We were apologizing for it. We were rationalizing for it. And the truth is that we know infinitely more today about the labor practices and the penal practices and the human rights violations of the Soviet Union than we did back in the 1930's in Germany.

And it is my view that it is simply a blemish on our national conscience and reputation for us to fail to enforce this statute.

Moreover, at a practical level, for us to fail to do so makes a mockery of our process. And if there is one thing that is calculated to earn the ridicule and the distain not only of the Soviet Union but of every country in the world is when we fail to live up to our own professed idea. So that's the importance of it, and why I have

been interested in it and why I'm so grateful to you for being interested in it. That's the significance of it in my opinion.

Mr. Keating, you have been a wonderful, cooperative witness. I'm grateful to you. I look forward to working with you. I am going to report to my colleagues that you have every prospect of serving with great distinction as the Assistant Secretary. I'm going to warmly endorse your nomination to my colleagues with my anticipation that the Chairman of the full committee will schedule your nomination for a mark-up at a very early date; certainly, before the recess of Congress, and that it will be approved by the Senate before the recess. And I hope that's the case. And I at the appropriate time intend to make a brief speech to my colleagues in the Senate about the testimony that you have presented, about your qualifications for the office.

And so thank you and congratulations. Unless you have something further, I'm ready to give up for the day.

Mr. KEATING. No. I've said enough, Senator. Thank you very much.

Senator ARMSTRONG. Thank you, Mr. Keating. Thank you, everyone. We are adjourned.

Mr. KEATING. Thank you.

[Whereupon, at 11:46 a.m., the hearing was concluded.]

[The prepared statement of Senator Nickles follows:]

U.S. SENATOR

Don Nickles

OKLAHOMA

FOR IMMEDIATE RELEASE
November 22, 1985

CONTACT PAUL LEE
202 224 5754

Statement by Senator Don Nickles
before the Senate Finance Committee

Mr. Chairman and members of the this Committee, it is my distinct pleasure to introduce to you this morning President Reagan's nominee to be the next Assistant Secretary of the Treasury for Enforcement and Operations, Frank Keating.

His responsibilities will include the Secret Service, the U.S. Customs Service, the Bureau of Alcohol, Tobacco, and Firearms, the U.S. Federal Law Enforcement Training Center in Georgia, and U.S. tariff negotiations.

I believe that there are few men or women in government today who are as qualified as Frank Keating. And if one word were to be used to describe his years of service to the public it would be: success. His performance is always impeccable.

He has served as a special investigator for the Federal Bureau of Investigation, Tulsa County Prosecutor where he never lost a trial, Oklahoma State Representative, and State Senator.

It was in the State Senate where I had the opportunity to serve with Frank and experience first-hand his leadership abilities. He was an extremely effective legislator, demonstrated by being elected by his peers to Senate Minority Leader.

In January of 1981, I recommended to the President that he nominate Frank to be United States Attorney for the the Northern District of Oklahoma. He was quickly confirmed and became an almost instant success.

He organized the nation's first Narcotics Task Force to put large scale traffickers out of business and in prison. He was commended by then-Attorney General William French Smith for the efficiency of his office and was appointed by the Attorney General as National Chairman of the Attorney General's Advisory Committee for U.S. Attorneys.

I believe he will do an outstanding job as Assistant Treasury Secretary, and I strongly recommend that this Committee move his nomination to the full Senate as soon as possible.